

BOARD OF REGISTERED NURSING

CURRENT SUNSET REVIEW ISSUES

BOARD ADMINISTRATION ISSUES

ISSUE #1: (IS BRN MEETING THE GOALS AND OBJECTIVES OF ITS STRATEGIC PLAN?) Is the BRN meeting the goals and objectives of its Strategic Plan developed in 2006, and should the strategic plan for the Board be updated?

Staff Recommendation: *The BRN should explain to the Committee whether it believes it is meeting the goals and objectives of its Strategic Plan of 2006 and briefly what efforts it is taking to address the concerns and changes which have been proposed by this Committee and the DCA pursuant to the particular problems identified last year. The BRN should also complete an update of their Strategic Plan as soon as possible.*

BRN Response: The Board of Registered Nursing (BRN) is meeting the vast majority of its goals and objectives as detailed in the 2006 Strategic Plan. However, there has been, and continues to be, significant deficits in meeting Enforcement Program-related goals and objectives. The BRN, in collaboration with the Department of Consumer Affairs (DCA), has developed strategies to enhance the Enforcement Program. However, as outlined in the Sunset Review Report Addendum, already approved staff are needed, as well as additional staffing in critical program areas, to ensure the BRN is working to protect the public as effectively as possible.

The BRN has been aware of the problems in the Enforcement Program, including the length of time it takes to process disciplinary cases, for a number of years, and that it is an ongoing problem. Over the years the BRN attempted to work within the existing system, always aware of the issues and shortcomings, and then in 2008 and 2009 it was brought to the attention of the public by the media. Subsequently, the following improvements have since been instituted:

- **Fingerprinting of Nurses Upon Renewal** – On August 1 1990, by statutory authority, the BRN began requiring fingerprints for all RN applicants. Beginning in March 2009, following the enactment of emergency regulations, fingerprints were required of all licensed RNs upon their license renewal, who were not previously fingerprinted by the BRN.
- **Review of Internal Processes** – The BRN identified areas for streamlining and improving processes. The BRN continues to review processes and work closely with the Division of Investigations (DOI), Attorney General’s Office (AG’s Office) and the Office of Administrative Hearings (OAH). The BRN depends upon all of these agencies to complete disciplinary case work.
- **Regulatory proposals** – The BRN has promulgated regulations to amend or add sections to the BRN regulations related to the Consumer Protection Enforcement Initiative (CPEI) and failed SB1111. The regulatory proposals:
 - Provide authority to the BRN Executive Officer to approve settlements for revocation, surrender, or interim license suspension (Section 1403);

- Require an Administrative Law Judge (ALJ) to revoke a license, without a stay order, if licensee violated codes related to inappropriate sexual contact or offense (Section 1444.5);
- Require an evaluation and/or examination of an applicant if it appears the applicant is unable to practice nursing safely due to mental and/or physical illness. The Board is required to pay for the examination (Section 1410);
- Require license revocation or denial for licensees who are sex offenders (Section 1443.6);
- Define “unprofessional conduct” to include no gag clauses in civil settlements, not providing requested records during an investigation, not cooperating in an investigation, failure to notify the Board within 30 days of felony charges or indictment, arrest, conviction, other licensing-related disciplinary actions, or to comply with a subpoena (Section 1441).

The Board is aware that a review and update of its Strategic Plan is needed. The BRN now has a full compliment of Board members and is working on hiring an Assistant Executive Officer, which is a key managerial position that should have input into the Strategic Plan. The BRN will begin work on updating the Strategic Plan when this position is filled. The Board is committed to continuing its proactive role in ensuring the safe delivery of healthcare in California.

ISSUE #2: (THE NEED FOR THE CONTINUED WORK OF THE BRN’S ADVISORY COMMITTEES ON EDUCATION AND WORKFORCE ISSUES.) Should the Education Advisory Committee and the Nursing Workforce Advisory Committee of the BRN be combined and meet concurrently with the BRN to address common issues regarding both nursing education, nursing shortages, disparities in the nursing profession and make recommendations to the BRN, the Administration and the Legislature?

Staff Recommendation: *The BRN should combine both these committees, the EAC and NWAC, and begin to address some of the more critical issues regarding both the education of nurses and workforce planning development for the nursing profession. Recommendations and policy direction should be forthcoming from the BRN to the Administration, the Legislature and other state and local agencies pursuant to the work of what would now be a single committee dealing with education and workforce issues. The BRN should also consider if more current information and data is necessary. For example, the last RN Employer Survey was conducted in December 2004. This Survey provided key information regarding the recruiting and retention of RNs and the needs of health care employers. Also, determining where there may be communities in need and lack of nurses in certain geographic locations should also be examined.*

BRN Response: While the BRN agrees that education and workforce issues are intertwined and should not be examined separately or in isolation, there are issues and work in each of these areas that benefit from a depth and richness of knowledge and experience that can be obtained from a variety of individuals representing different areas. For example, educators from community colleges may have a different perspective than those from state or university level colleges and public versus private school educators may also have different issues. Similar in the workforce, nurses and/or administrators representing large hospitals may have different needs or perspectives than those from public health clinics or home health agencies and different regions of the state may also have different employment and educational issues.

For these reasons the BRN has found value in having two separate committees so representation from the different areas can be obtained without the committee becoming too large. In order to allow for both groups to work together and still have a depth of representation, the BRN recommends continuing both of the committees, but have overlap of some members between the two committees. The Education Advisory Committee (EAC) would work as a subcommittee of the Nursing Workforce Advisory Committee (NWAC) with overlapping members reporting and sharing input to each committee on the activities of the other. Since there are many issues identified related to both nursing workforce and education this would also allow for more issues to be covered as the committees could work simultaneously.

The BRN also agrees that the NWAC should begin meeting more often, considering all of the issues that should be addressed. The BRN will review this in light of the limited available budgetary and staff resources and consider the options for the number of meetings that would be feasible. If it is determined a priority to have ongoing committee meetings on a regular basis for employment and educational issues and to provide recommendations and policy direction to the Administration, the Legislature and other state and local agencies, then legislation may be necessary to designate this standing work and provide the BRN spending authority similar to that provided in Business & Professions (B&P) Code 2717 which mandates collection, analysis, and publication of workforce data. In the meantime, the EAC will continue to meet to maintain the valuable input needed on the Annual School Survey and other important educational issues.

In addition to the Annual School Survey, the biennial RN workforce survey, and the biennial RN forecasting report, the BRN directs or conducts various research and surveys as the need becomes apparent and the monies are available. For example, in 2007, the BRN surveyed nurses endorsing into and out of California when there appeared to be a trend that more nurses were leaving California than moving into the state. Currently, the BRN is analyzing recidivism data for nurses on probation and analyzing a survey sent to Nurse Practitioners, Nurse Midwives and Clinical Nurse Specialists. The BRN has considered conducting another employer survey similar to the one done in 2004; however, one is currently being completed by the Moore Foundation. In order to make best use of resources, the BRN will review the data from that study when it becomes available, and then consider if, and when, there may be a need for another study in the future.

NURSING EDUCATION AND PROGRAM APPROVAL ISSUES

ISSUE #3: (ADDITIONAL IMPROVEMENTS NEEDED TO THE APPROVAL PROCESS FOR NURSING SCHOOLS/PROGRAMS.) Are there ways in which the BRN could improve and streamline its approval process for pre-licensure nursing programs and thereby facilitate the approval of more programs and increase access to nursing education?

Staff Recommendation: The BRN should explore any opportunity to streamline their current nursing program approval process to decrease the amount of time it takes for program approval and to work more closely with those private for-profit programs also seeking approval of their programs to meet the current rules and regulations of the BRN regarding these programs. The BRN should also consider providing training to its staff and NECs involved in program approval so the new rules and regulations are applied consistently to these programs. The involvement of the BPPE in the approval of nursing school programs seems unnecessary and therefore the BRN should assume all responsibility regarding approval of these programs. In doing so, the BRN should be given authority to charge an appropriate fee to cover their costs for reviewing

documents, consulting with the program and conducting site visits. This fee should be similar to fees currently assessed by the BPPE for approval of school programs. It should be noted that current student protections provided under the BPPE Act should continue to apply to those nursing programs which are currently approved by BPPE and that the BRN would now assume the responsibility of responding to student complaints regarding a nursing program.

BRN Response: The BRN is aware that there are many qualified applicants applying for nursing programs and not enough spaces to educate them all. While the exact number of individual applicants is not known as students may apply to more than one program, we do know that in 2009-2010 California prelicensure nursing programs received just over 41,100 qualified applications and were only able to accept 14,228 new students. While the BRN realizes this is an important issue and works proactively with nursing education programs and other agencies to assist wherever possible, it is also the responsibility of the BRN to ensure that all RN students receive a quality education that prepares them to practice nursing safely upon licensure. To this end, the BRN must ensure that approved nursing programs meet BRN requirements in their educational programs and has developed regulations, policies, and procedures for approving new programs that allows appropriate assessment by the BRN.

While revising the recently approved education program regulations (Sections 1420 to 1432) which became effective in October 2010, the BRN was able to review the nursing program approval process and consider ways to streamline and improve. The Board carefully reviewed all steps of the initial approval process and considered combining the two-step process of the feasibility study and the self study reports. The feasibility study is for the school to establish a clear need for the program, to demonstrate a budget to support the program, and adequacy of clinical sites without displacing other existing programs. The depth of information required is not as detailed in the feasibility study as in the self study report. It is in the self study report that detailed information on curriculum, contracts for clinical facilities, faculty hiring plan, and documentation of the physical facility or planned sites must be submitted. After thorough review, the Board decided to continue the two-step process as it allows the Board time to provide feedback from the feasibility study before the program has expended a great deal of effort, time, and money on the self study report.

The average length of time from the initial submission of a Letter of Intent until the program receives the final Board approval varies widely. Steps that the BRN has found delay the process include:

- School waiting for degree granting authority from the Bureau of Private Postsecondary Education (BPPE), or accreditation from Western Association of Schools and Colleges (WASC), or another regional accrediting agency.
- School's inexperience with conducting nursing education, specifically prelicensure registered nursing education.
- Shortage of clinical facilities.
- Shortage of appropriate faculty, including a qualified program director.

To assist with the new programs, the BRN has one Nursing Education Consultant (NEC) who handles communications received from all new schools until the feasibility study report is received. At this time, the NEC assigned to review all of the feasibility study reports takes over the communications with the school until the feasibility study report is accepted by the Board. When the feasibility study report is accepted by the Board, an NEC is assigned to the school as the consultant and assists with the final phase of the approval process and continued monitoring of the program.

The designation of one NEC to work with schools during the initial approval phase reduces variations in providing information and eliminates inconsistencies in the review of the feasibility study reports. When the education regulations were revised, the guidelines for new programs titled, *Instructions for Institutions Seeking Approval of New Prelicensure Registered Nursing Program*, was also revised. The steps and requirements for the feasibility and self study were revised to increase clarity and provide more detail to eliminate unnecessary delay in completing the initial program approval process.

The BRN would require legislative authority to take over the BPPE responsibilities for institutional approval, handling additional student complaints and to collect fees. In order to complete these tasks, the BRN would require additional NEC, analytical and support staff, training, and resource support. BPPE's jurisdiction is institutional approval to operate a post-secondary educational institution and grant degrees, including a nursing degree, while the BRN's current jurisdiction is the programmatic approval. While the criteria reviewed have similarities, there are distinct differences that require specific knowledge and experience. The NECs performing nursing program approvals are versed in programmatic requirements but are not familiar with the rules and regulations for institutional approvals and thus additional staff with experience in this area would need to be hired by the BRN.

ISSUE #4: (APPROPRIATE OVERSIGHT OF CURRENT NURSING PROGRAMS.) Does the BRN provide appropriate oversight of those schools approved and those which may have potential problems, and take immediate action against those which do not meet the requirements of the BRN or are considered unapproved/ unaccredited?

Staff Recommendation: *Even though the BRN has not placed a warning status on a nursing program over the past eight years, the BRN should assure that if such a status is accorded a program that it should be reflected on the Board's Website regarding that program. The BRN should continue its active role in trying to assure that troubled nursing programs can continue to meet both the rules and regulations of the BRN to maintain approval of their programs. The BRN must also work more closely with the AG's Office and perform site-visits to assure that a nursing program which is not approved somehow continues to operate in California. In other words, there must be an IMMEDIATE shut down of this program if the BRN or AG becomes aware of its continued operation so that students are not ultimately deceived and waste precious years of their lives attending a bogus program. The BRN should also consider other ways in which it can continue to better inform students about the information it has available regarding nursing programs; those approved and disapproved, the graduation rates of these programs, and potential employment from these programs. It is also not clear if use of the term "unaccredited" is clear when the BRN is also discussing those programs which may be "unapproved." There are nursing programs in California which may not have institutional or program accreditation, which are considered as "unaccredited" but do have approval status from the BRN to operate in California.*

BRN Response: It is the responsibility of the BRN to approve nursing programs. In the past, the terminology "approved" and "accredited" were sometimes used interchangeably in reference to the BRN prelicensure nursing program approval process and has resulted in confusion. The recent enactment of revisions to the nursing education regulations (Sections 1420 to 1432) clarifies that the BRN "approves" nursing programs in California. Professional and other organizations accredit programs and/or institutions. Currently, the BRN does not require prelicensure nursing programs to be accredited.

The BRN strives to keep the public informed about information related to BRN approved nursing programs. Information is provided to the nursing programs themselves, is included in the BRN Report Newsletter, and is a prominent tab on the BRN Web site. A list of approved nursing programs, each program's annual NCLEX passing rate for the past five years, and the most current Annual School Report is available on the BRN Web site. Programs whose annual NCLEX passing rates, for first time test takers, falls below 75%, are required to make timely assessments and improvements. When a California based program or school, which is not approved by the BRN, is brought to our attention through a fraudulent transcript or consumer complaint, the BRN works with the AG's Office through our Enforcement Division. Once due process has occurred, every effort will be made to publicize the information. The BRN continues to consider different media resources (e.g., e-mail or list-serve blast, press release, etc.) as a way to communicate this information to the public. The BRN will consider the addition of other information to the Web site, such as approval status, as well as other communication methodologies, to keep consumers informed.

ISSUE #5: (REQUIRE ACCREDITATION FOR ALL NURSING PROGRAMS?) Should accreditation be required for all pre-licensure nursing programs to be approved by the BRN?

Staff Recommendation: *The BRN should carefully consider a requirement for all nursing programs to be accredited in light of recent legal decisions and actions taken by other nursing boards, and by the Legislature, in dealing with the issue of which accrediting organizations would be recognized. It should also carefully consider a timeline for implementing such a requirement so as to not severely impact existing programs or those programs which may be approved by the BRN in the near future.*

BRN Response: During the regulatory process in which the education regulations were revised, the concept of requiring accreditation for schools of all prelicensure nursing programs was considered by the Board. The BRN received several public comments recommending an accreditation requirement. The Board voted to accept the comments and to consider promulgation of a regulatory proposal requiring that schools with BRN approved nursing programs be regionally or nationally accredited. This requirement would be for institutional accreditation for the school, not professional nursing program accreditation. The Board decided that it would be in the public interest to hold public forums for the purpose of gathering input prior to developing proposed regulatory language.

Public forums have been scheduled during the months of April, May, and June 2011 to be held across the state in San Diego, Los Angeles, Fresno, and Sacramento. Notice of the forums has been posted on the BRN Web site, mailed to known stakeholders and others as requested. Input gathered at the public forums, and by direct submission to the BRN, will be provided to and considered by the Board for any further action.

ISSUE #6: (ADDITIONAL INFORMATION NEEDED REGARDING PROGRAM/SCHOOL PERFORMANCE.) What additional information could be made available by the BRN to students of pre-licensure nursing programs to evaluate the quality of nursing educational programs?

Staff Recommendation: *The BRN should continue to expand on ways to make this type of school/program data relevant and readily available to potential students of pre-licensure nursing programs. The BRN should consider whether they can provide a breakdown on individual prelicensure programs and provide the additional following information for each program:*

- *Whether a Public or Private Program*
- *If Program is Accredited and by Whom*
- *Possible Transfer for Accreditation Purposes*
- *Student Completion Rates*
- *Student Retention and Attrition Rates*
- *Attrition Rate for Graduates to Employment*

BRN Response: The BRN strives to be transparent and provide the public with information whenever possible. Some of the information listed above is already available to the public, some is collected by the BRN but is not public for each individual program at this time, and some the BRN does not collect. Much of the information not collected by the BRN should be available from the school or the appropriate Chancellor's (California State Universities and Community Colleges) or Regent's Office (University of California). Collecting, publishing, and maintaining currency of this information is a labor intensive task which would require additional BRN staff resources and possibly additional technological resources to accomplish. The BRN will consider a listing of links to appropriate Web sites where information could be found. Following is the current availability status from the BRN of the information listed above:

- **Public or Private Program** – This information is currently provided on the BRN Web site on the list of approved schools (private schools are denoted by an asterisk).
- **Program Accreditation and by Whom** – The list of approved schools on the BRN Web site includes a link to that school/nursing program Web site where school accreditation information is usually readily available. Program voluntary professional accreditation by the National League for Nursing Accrediting Commission (NLNAC) or Commission on Collegiate Nursing Education (CCNE) is collected on the BRN Annual School Survey but is not currently included on the BRN Web site list of approved programs.
- **Possible Transfer for Accreditation Purposes** – Each school has policies for transfer of credits. The BRN directs the public to check with the school and the BRN Web site list of approved programs includes a link to the school's Web site. Generally, most colleges and universities will accept transfer credits earned at regionally accredited colleges and universities for general studies and nursing courses. Acceptance of transfer credit from schools that are accredited by a U.S. Department of Education recognized agent that is not one of the "regional" accreditors, is highly variable. If it is anticipated that credits from an approved program will not transfer to another college or university, the BRN requires the program to publicize this on their website and in their handbooks and catalogs.
- **Student Completion Rates/Student Retention and Attrition Rates** – The BRN collects this information on the Annual School Survey but it is not currently published on the BRN Web site by school. Program's methods for calculation of these rates and time frames on which they are based vary, which may cause inconsistencies in the data being provided by the BRN and by the program. Formalizing the use of this information would require policy that established a definition for the data.

- **Attrition Rate for Graduates to Employment** – The BRN Annual School Survey requests employment information for program’s recent graduates but this information is not provided by all schools and is often only an estimate as it is very difficult for schools to obtain this data after students have completed the program.

While the BRN would like to include as much information as possible by school on the Web site, the ability to maintain accuracy and currency, and thus reliability, of the information relative to the current level of BRN staff resources must be taken into account.

NURSING WORKFORCE AND DIVERSITY ISSUES

ISSUE #7: (NURSING GRADUATES ARE HAVING DIFFICULTY IN FINDING EMPLOYMENT.) There is currently an unexpected difficulty of new nursing graduates finding employment in California and this hiring dilemma threatens to undermine the progress that has been made, according to the BRN.

Staff Recommendation: *The BRN should continue to serve on the Committee of the CINHC, and with other organizations and agencies to find ways to improve new RN graduates employability and their continued practice in the nursing profession. The BRN should also work with nursing programs, employers, health care facilities, and other agencies and organizations to ensure the availability of clinical training for nursing students and to enhance the employability of RN graduates; this includes promoting the use of transition or residency programs for RN graduates.*

BRN Response: The BRN continues to serve on many committees, including CINHC, and partners with various organizations that are working on ways to improve the employability of new RN graduates, including assisting with a recent survey of new graduates to assist in gathering information on the extent of the problem statewide. The BRN supports new RN graduate transition and residency programs such as those in the Bay Area and beginning in southern California. The BRN supports funding and legislation for these programs that include partnerships between nursing programs and employers to provide post-licensure experience and education to increase the RN’s skills and keep them engaged in the nursing profession. The BRN will continue to support and promote these activities and work with nursing programs, employers and other agencies.

ISSUE #8: (IS THERE STILL, OR WILL THERE CONTINUE TO BE, A NURSING WORKFORCE SHORTAGE?) Will California continue to experience a critical shortage of registered nurses and what can the BRN do to address this shortage?

Staff Recommendation: *The BRN should continue its efforts in increasing the number of RN graduates by not only improving on its approval process for nursing programs, but also working with schools, colleges and universities to promote, create or expand nursing programs, provide for more timely matriculation for students, alleviate course repetition through standardized course requirements and find ways to increase access to nursing programs especially for socioeconomically disadvantaged students.*

BRN Response: The BRN continues efforts in these areas. BRN staff currently serves on the AB 1295 Implementation Group, a committee of educators and nursing stakeholders, focused on promoting transfer pathways and consistent course requirements between schools to eliminate students having to repeat coursework when transferring between schools. The BRN’s NECs

encourage nursing programs to streamline processes, reduce barriers to increase enrollment, and to implement measures to recruit diverse student populations. Many nursing programs have implemented successful programs to increase student retention rates and reduce attrition. These programs usually include the use of dedicated counselors to focus on students' academic, personal, and financial needs and include remediation and tutorial support. The success of these programs is reflected in the 2009-2010 BRN Annual School Report which reports a ten-year high statewide retention rate of 77.1% in 2009-2010 compared to 66.2% in 2000-2001 and a ten-year low attrition rate of 13.9% in 2009-2010 compared to 17.6% in 2000-2001. These types of interventions benefit all students, particularly those who are socioeconomically disadvantaged.

The BRN is aware that the number of qualified nursing program applicants applying exceeds the number of nursing program seats. In 2009-2010 California pre-licensure nursing programs received just over 41,100 qualified applications and were only able to accept 14,228 new students. There is no way to determine the number of individuals these applications represent due to the very common practice of the submission of multiple applications to multiple schools by a single student. The actual number of students is likely less than the number of applications, so the exact number of students impacted is not known.

According to the 2009-2010 BRN Annual School Report, the major barriers to program expansion reported by the nursing programs are insufficient clinical sites (80.6%), insufficient funding for faculty (51.1%), and insufficient numbers of qualified classroom and clinical faculty (43.9 and 43.2%, respectively). Some nursing programs have implemented and are continuing to develop creative solutions and alternatives (i.e., expanding utilization of clinical simulation, partnering with other programs for shared distance learning, etc.) to allow admission of more students on their increasingly limited budgets. The Board supports these efforts by reviewing and approving these programs, while still monitoring them, to ensure they meet regulatory requirements and prepare students to safely practice registered nursing.

ISSUE #9: (IS THERE STILL A SEVERE LACK OF DIVERSITY IN THE NURSING PROFESSION?) Is there more that the BRN can do to further diversity in the nursing profession by utilizing its advisory committees, the data it receives, and in its participation and collaboration with other schools, universities, colleges, and nursing programs and with other local and state agencies, nursing associations, groups and nursing research organizations?

Staff Recommendation: *The BRN should continue to focus its efforts on diversity issues, both through its collaboration and participation with a number of state and local agencies, health facilities/employers, educational institutions, nursing programs, nursing associations and groups, and research organizations.*

BRN Response: The ability of California RNs to provide culturally competent care to Californians is associated with the language skills and diversity of the RN workforce. The BRN recognizes the value of cultural diversity in the nursing workforce and requires that the curriculum of nursing education programs includes cultural diversity in their instructional content (Section 1426(d)). The BRN Executive Officer and a Board member are scheduled to attend a conference on diversity for health care professionals. The BRN works with nursing programs and other stakeholders to support and encourage diversity in the RN workforce, however, efforts to increase ethnic diversity in nursing and other professions requires a total community effort. Community and health care organizations and educational institutions should

make workforce diversity a goal, and work toward increasing diversity. A plan that has a lasting solution would also require involvement with the K-12 populations.

The BRN is currently working on a contract with the University of California, San Francisco (UCSF) Center for the Health Professions that will include an analysis of data from a variety of existing sources to focus on trends in the diversity of California RNs, statewide and by region, and compare this diversity to that of the population of California as a whole. Data will be examined to identify gaps in representation of racial/ethnic groups both statewide and by region. Estimates of future diversity of the RN workforce will also be developed. When it is reinstated, the BRN will work with Nursing Workforce Advisory Committee (NWAC) on this issue to review and analyze the data and propose potential solutions.

ISSUE #10: (SHOULD THE FUNDING FOR THE NURSES SCHOLARSHIP PROGRAM BE INCREASED?) It is unclear how well the Board's scholarship and loan repayment program, which is managed by the OSHPD, is functioning and if moneys available are being fully utilized, and whether the funding should be increased based on the number of potential applicants. Should the BRN be the central source for information regarding available funding for students or at least the first point of contact for students?

Staff Recommendation: *It is not clear what commitment will be made to scholarship programs for nursing students in the future. However, it does appear that there will be more dollars available for repayment of loan programs, especially for those students who commit to serve in medically underserved areas or who want to become nursing instructors and faculty members for nursing programs. The BRN should consider increasing the amount of licensing fee committed to its scholarship program by \$5 to at least increase the availability of funds for those students wishing to attend nursing programs. Prior to any increase, however, the BRN should report to the Legislature on how the moneys are being expended by OSHPD. Since these are licensing fees they must be expended only for those purposes which would further the nursing profession and not be diverted for other purposes. The BRN should also meet and collaborate with OSHPD, Labor and Workforce Development Agency, California Workforce Development Board and other agencies which may be involved in providing scholarship and loan repayment programs for students, and assure that potential and current nursing students have information and access to information regarding these programs.*

BRN Response: Biennially, upon license renewal, RNs currently pay a \$10.00 fee which is passed on to the Health Professions Education Foundation under the Office of Statewide Health Planning & Development (OSHPD), for a program that administers the BRN Registered Nurse Education Fund and provides scholarship and loan repayment programs for aspiring and practicing nurses. According to the OSHPD RN fund condition, updated as of December 23, 2010, the fund has been carrying over \$2 million dollars in reserve. In 2009/10, \$1,732,832 in scholarships and loan repayments were awarded and the RN fund collected \$1,741,645. While it appears they are currently using all of the monies, there is a large reserve and the BRN plans to further investigate the amounts and meet with OSHPD to discuss if there is a need for additional monies at this time.

The BRN would also like to find out more about their different programs including; guidelines for application approval, and student and licensee access to information. Since the BRN just increased renewal fees by more than 70% (from \$75 to \$130), it is necessary to investigate the current scholarship system before an increase be considered. The need for additional nurses, including

faculty, is a statewide community and professional issue. Accordingly, funds should come from other sources and not just one to be paid for by the registered nursing community. RNs are already contributing \$10.00 biennially to this effort and it needs to be reviewed if they should be required to contribute more. The Health Professions Education Foundation is charged with identifying funding sources for all health professions, including registered nursing. BRN has also been told by the RN Education Fund that unspent funds are returned to the fund (not used for any other purpose) and has built the reserve. The funds are not re-directed to the General Fund.

The BRN currently has two representatives on the Health Professions Education Foundation's Nursing Advisory Committee, which makes recommendations on Program policy and scholarship/loan repayment awards to the Foundation's Board of Directors. The Board will continue to work with this agency as well as other agencies involved in providing similar programs to assure that nursing students and licensed RNs have information and access to these programs.

NURSING SCOPE OF PRACTICE ISSUES

ISSUE #11: (SCHOOL PERSONNEL PROVIDING NURSING SERVICES.) The BRN is concerned that school personnel may be providing nursing services that in other settings would be prohibited.

Staff Recommendation: *This issue will have to be resolved through the Legislature. Special consideration should be given to the nurse's scope of practice and potentially allowing others to perform those procedures which have been traditionally restricted to the practice of nursing. The BRN should continue to provide input and participate in discussions regarding this very important issue.*

BRN Response: The BRN continues to work with consumers, the California Department of Education (DOE), school nurses and nursing organizations, as well as other stakeholders, to address school health-related issues as they relate to registered nursing practice. The Board also continues to maintain its position that students should receive all health care services to which they are entitled and which are necessary for them to obtain maximum benefit from their educational program, and that such services must be provided by individuals legally authorized to provide the services.

ISSUE #12: (PROVIDE PRESCRIPTIVE AUTHORITY TO ADVANCED PRACTICE NURSES?) 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?

Staff Recommendation: *The BRN continues to recommend that the Nursing Practice Act be changed so that the term "furnishing" is replaced with "prescriptive authority." The Legislature should review this issue to determine whether such a change is necessary and to determine if confusion still exists with pharmacists filling medication orders.*

BRN Response: The BRN continues to receive inquiries from pharmacists and nurses related to this issue. This has also provided a delay for Nurse Practitioners (NPs) and Certified Nurse Midwives (CNMs) in obtaining furnishing authority from the Drug Enforcement Administration (DEA). Whenever "prescriptive authority" is written into federal or state law related to drug classifications,

because of the term “furnishing,” NPs and CNMs must then obtain a change in California laws related to their practice in order to “furnish” these drugs. With California looking to NPs and CNMs to fulfill more primary care health roles, having to obtain a change to California law every time the term “prescriptive authority” is used is an unnecessary time and cost burden to California.

ISSUE #13: (DEFINE “ADVANCED PRACTICE NURSE?”) Should a separate statutory definition for “advanced practice nurse” be created?

Staff Recommendation: *The BRN should consider whether a separate statutory definition for “advanced practice nurse” should be created similar to other states.*

BRN Response: B&P Code Section 2725.5 was added in 2003 and identifies that an “advanced practice registered nurse” are those that have met the requirements of the Sections related to Nurse Practitioner, Certified Nurse Midwife, Clinical Nurse Specialist and Certified Registered Nurse Anesthetist. The BRN believes this to be an adequate definition of what are considered advanced practice nurses.

CONTINUING COMPETENCY ISSUES

ISSUE #14: (INCREASE CONTINUING EDUCATION AUDIT OF RNs AND PROVIDERS?) Should the BRN increase the random audits it performs per year on both RNs and Continuing Education Providers (CEPs)?

Staff Recommendation: *The BRN should submit a Budget Change Proposal to obtain staff dedicated to conducting increased RN audits and begin again audits of CEPs. The BRN should only be required to increase audits of RNs of CEPs if it receives sufficient staffing to conduct such audits. The BRN should also continue to review and evaluate national continued competence research and possible clinical competence based CE and make recommendations for changes, as appropriate.*

BRN Response: The BRN plans to submit a Budget Change Proposal (BCP) to obtain staff dedicated to conducting RN and Continuing Education Provider (CEP) audits. As reported in the 2010 Sunset Review Report Addendum, the BRN has been denied recent BCPs requesting additional support staff, and must continue to work with the limited staff and resources currently available. The BRN will not be able to complete the important function of RN and CEP audits, at the necessary levels, if additional staffing is not approved. The BRN continues to be involved with and evaluate national continued competence research, including clinical competency, and will make recommendations for changes as appropriate.

ENFORCEMENT ISSUES

ISSUE #15: (DISCIPLINARY CASE MANAGEMENT TIMEFRAME STILL TAKING ON AVERAGE THREE YEARS OR MORE.) Will the BRN be able to meet its goal of reducing the average disciplinary case timeframe from three years or more, to 12-18 months?

Staff Recommendation: *It does not appear as if the BRN will be able to meet its goal of reducing the timeframe for the handling of its disciplinary cases for some time. Lack of adequate staffing, reliance on DOI and delays at the AG's Office in prosecuting cases, and OAH in hearing cases, and the inability to obtain necessary records, all contribute to the current average of three years to complete a disciplinary action. The Committee should consider communicating with the Senate and Assembly Budget Committees, with the Department of Finance and with the Governor's Office on the unique circumstances which exist regarding the funding and staffing of the BRN. It was the intent of both Budget Committees last year to assure that the BRN had sufficient staffing and funding to provide for the increased staffing levels it needed. Without this additional staffing, the investigation and prosecution of BRN disciplinary cases and the overall administration of its other programs, including licensing of nurses in an expeditious manner, will be in jeopardy. Backlogs of licensing applications and disciplinary cases will increase and any action on the part of the BRN against a nurse, who has either violated the law or the Nursing Practice Act, will be severely delayed. The BRN should also be granted statutory authority to deal with its need to obtain documents and records it needs pursuant to their investigations, including the need for medical records. The authority currently granted to the Medical Board of California in obtaining medical records should also be granted to the BRN. Provide that failure to furnish information in a timely manner to the BRN or cooperate in any disciplinary investigation constitutes unprofessional conduct. The Committee should also give consideration to auditing both DOI and the Licensing Section of the AG's Office to determine whether improvements could be made to the investigation and prosecution of BRN's disciplinary cases and coordination between all three agencies.*

BRN Response: The BRN is working toward improving processing timeframes with activities such as regulatory changes, regular meetings and communications with the DOI and AG's Office, streamlining internal procedures, and data capturing improvements. These activities have shortened the average case processing timeframes from 42 months in 2007-2008, to 36.7 months in 2008-2009, and to 33.5 months in 2009-2010. This is a noteworthy reduction considering the limited resources the BRN has received to date and shows a move in the right direction. The only phase of the process to which the BRN has total control is the complaint processing. The average time to complete this phase of the process has been lowered drastically in the past three years, from 3.4 months in 2007-2008 to 1.5 months in 2009-2010. These reductions are a result of many procedural changes, consistent staffing, and BRN staff resolving many complaints. The BRN has done everything possible, within the existing resources, to improve the case processing timeframes.

However, even in light of these significant improvements, the BRN will not be able to meet the CPEI timeframes for handling disciplinary cases in 12 to 18 months in the near future without significant changes in staffing, resources, and improved timeframes in case processing within DOI, AG's Office and OAH. While the BRN did receive approval for 37 new enforcement positions through the CPEI BCP, due to staff reductions and hiring freezes we have only filled one of these positions. In addition, three existing limited term staff in the Enforcement Division will be lost as their terms are about to expire. The BRN has exhausted all measures to keep these employees, however, due to the hiring restrictions, and unless something is done immediately, will lose all three of these already trained and productive enforcement staff.

In addition to increased staffing and the promulgation of pending regulations granting the BRN Executive Officer authority to approve settlement agreements for the revocation, surrender, or interim suspension of a license, the BRN recommends the following actions to assist in shortening the timeframes for handling disciplinary cases:

- **Lowering the burden of proof** – Lower the burden of proof in enforcement cases from clear and convincing to preponderance. There are currently 34 other states where preponderance is the burden of proof for RNs.
- **BRN hire an attorney** – Allowing the BRN to hire at least one attorney to work with the Enforcement Division to develop better investigative requirements to meet the burden of proof, oversee staff to prepare less complex pleadings (accusations and petitions to revoke probation), and oversee staff to prepare default pleadings would improve many case timeframes by the BRN having less reliance on the AG's Office. Another alternative would be to allow the BRN staff to perform these functions under the direction of a DCA attorney.
- **Provide authority to issue public reprovls without accusation** – This could reduce the number of cases referred to the AG's Office for public reproof, the lowest level of discipline, thus reducing the time and cost to take action.
- **Provide authority to issue warning and educational letters** – This will give the BRN an additional tool as a lower level of discipline for those licensees whose violations do not rise to the level of formal action.
- **Consider other alternatives for administrative hearings** – Consider having less complex cases to be heard by a hearing officer instead of an ALJ or allow DCA to hire ALJs.
- **Allow AG's Office and OAH to hire more personnel** – The AG's Office needs more Deputy Attorney Generals and Legal Analysts to keep up with DCA's caseload and specifically the BRN's increasing workload as the BRN is now their largest client within DCA. OAH is in need of more ALJs to keep up with the number of hearings that are needed due to the increased workload. Currently, hearing dates are scheduled from 4 to 9 months out and case continuances are granted on a regular basis.

The BRN recommended and supports the auditing of DOI and the AG's Office to determine if there are ways to improve processing, coordination of agencies, and billing practices. 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 is forecasting a 117% increase in AG's Office costs from that in 2008-2009. The AG's Office bills the BRN in 15 minute increments whether a phone call or e-mail response takes that amount of time or less. As a result, BRN staff are having to save up questions or issues to call or e-mail to make sure it is being cost effective and using the entire fifteen, thirty or 60 minutes that we are being billed. This does not always lead to the most efficient use of the BRN staff time but maximizes the money being spent.

The BRN's regulatory proposal includes several other changes that should shorten the disciplinary case processing timeframes. These include: delegating to the BRN Executive Officer additional authority as outlined above; and defining specified acts, such as not cooperating with an investigation and failure to comply with a court order to release records to the BRN as unprofessional conduct. The obvious limitation is that the Board can take action against a licensee under these circumstances, but the licensee is only one component in the investigative process. The BRN needs authority to compel others, such as employers, health facilities, etc. to comply with the same requirements.

ISSUE #16: (DOES THE BRN RECEIVE SUFFICIENT INFORMATION ON NURSES WHO VIOLATED THE LAW OR HAVE ISSUES REGARDING THEIR COMPETENCY?)
Does the BRN receive sufficient information from the courts, other agencies, health facilities, and from the licensee if there is reason to believe they have been involved in criminal activity, violated the Nursing Practices Act, or have issues regarding their competency or ability to continue practice.

Staff Recommendation: *Require courts to report if there is a judgment for a crime committed or any civil judgment against the licensee for any death or personal injury in excess of \$3,000, or any filings of a felony. The DOJ should also report within 30 days to the BRN any arrests, convictions or other updates on licensees pursuant to their fingerprint file. The BRN should also be allowed to employ a sufficient number of investigators classified as peace officers to receive important criminal justice information regarding their licensees rather than relying on DOI. RNs should also be required to self-report any serious crimes committed. The BRN shall also be required to report any of its enforcement actions against its licensees to the NPDB and the HIPDB and to also query these data banks for those licensed in another state. The BRN should be able to contract with the NURSIS to meet this requirement, and report and retrieve enforcement actions provided on the NPDB and the HIPDB. Prohibit “gag clauses” against patients pursuant to a civil dispute settle agreement. The BRN should begin to explore the use of nursing peer review and mandatory reporting for all health care facilities within California, possibly modeled after the Texas law.*

BRN Response: Effective October 2008 the BRN began requiring, upon the renewal of a registered nurse license, the licensees to disclose if he or she has had any license disciplined by a government agency or other disciplinary body; or has been convicted of any crime in any state in the United States and its territories, military court or a foreign country since his or her last renewal. If a response of “yes” is provided, additional information regarding the matter is requested to determine what, if any, action is needed. The BRN is currently processing a regulatory proposal which includes defining as unprofessional conduct the RN failing to notify the BRN within 30 days of felony charges or indictment, any arrest, conviction for misdemeanor or felony, or other licensing related disciplinary actions. The issue of “gag clauses” is also addressed in the regulatory proposal, defining inclusion or attempting to include such clauses in an agreement to settle a civil suit arising from the licensee’s practice as unprofessional conduct.

The BRN continues to participate in the National Council of State Boards of Nursing (NCSBN) computerized discipline information exchange system called NURSIS. NCSBN is the BRN agent to supply disciplinary information to two national databases, the Healthcare Integrity and Protection Data Bank (HIPDB) and the National Practitioners Data Bank (NPDB). The BRN provides data to this system and is only able to query information we have provided to the database. The BRN does not have access or authority to query the HIPDB/NPDB for any actions taken by another state or reporting entity unless a fee is paid on a per licensee request basis. At its September 23, 2010 Board meeting the Board members voted for the California BRN to contract with NCSBN to electronically share licensing information on a daily basis to NURSIS. By electronically transmitting licensing information, the NURSIS system is able to timely notify the BRN (and all states) of a disciplinary action occurring which involves a current licensee.

The BRN agrees that court mandated reporting and subsequent arrest and conviction reporting from the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) as outlined in this recommendation is needed in order for the BRN to effectively protect the public by being able to

track and enforce timely discipline against licensees when warranted. The BRN is concerned with some law enforcement agencies who charge fees to obtain certified copies of arrest records. It delays the process as a purchase order must be obtained and then provided to the agency before they will release the records. It is unknown at this time the exact workload impact of enhanced court reporting requirements but it would require the matching of conviction records with arrest records and comparison of court records with DOJ records. DOJ provides subsequent arrest notifications but rarely provides conviction notifications. If the courts provide timely notice of a conviction, along with a certified copy of the documents, it would significantly reduce the amount of time to take disciplinary action.

The BRN also agrees that having investigators at the BRN is needed in order to be able to timely and efficiently process investigations. While the BRN has been approved to hire investigators, the hiring restrictions have not allowed for this to occur. There are currently two retired annuitant investigators working on only routine case investigations at the BRN. At this time there are approximately 635 BRN disciplinary cases pending at DOI for investigation and approximately 400 at BRN awaiting investigation. In order to attempt to improve processing timeframes, the BRN must obtain investigators as soon as possible.

The idea of nursing peer review has not yet been a topic of discussion, but the Board members have discussed the issue of mandatory reporting over the past year and a half and are interested in considering this as a method to improve public protection, however, no formal decision has been made to pursue at this time, due to the staffing resource limitations. Nursing peer review and mandatory reporting would undoubtedly create an increase in workload as the BRN currently receives a fairly small percentage of complaints from medical facilities. With over 364,000 active licensees there could be a dramatic increase in workload.

ISSUE #17: (PROTRACTED PROCESS TO SUSPEND LICENSE OF RN.) The BRN must go through a cumbersome process to suspend the license of an RN who may pose an immediate threat to patients or who have committed a serious crime and may even be incarcerated.

Staff Recommendation: *Extend the time constraints placed on the AG to file an accusation thus allowing the AG to utilize the ISO process without having to have their accusation prepared within a very limited time frame (15 days). Pursuant to Section 494 of the B&P Code, the BRN does not have to always rely on an ALJ to conduct the ISO hearing, the BRN also has authority to conduct the hearing and could do so more expeditiously where serious circumstances exist regarding the suspension of the nurses' license. Provide for automatic suspension of a nurses' license if the nurse is incarcerated and mandatory revocation of their license if they are found to be convicted of acts of sexual exploitation of a patient or if they must register as a sex offender.*

BRN Response: The Board supports extending the time to file an accusation pursuant to initiating the Interim Suspension Order (ISO) process. The limited timeframe is just one consideration in whether to pursue an ISO. The Board is interested in finding ways to reduce the cost in taking immediate action via the ISO process. The BRN has the authority pursuant to B&P Code Section 494 to conduct a hearing but needs to research the administrative and legal processes before a determination can be made if and how the BRN can use this authority.

The BRN's regulatory proposal requires that an ALJ's proposed decision must be to revoke the license if there is a finding of fact that a licensee had "sexual contact" with a patient, or has

committed an act, or been convicted of a sex offense. The proposed decision cannot contain an order to stay the decision. Additionally, the Board may deny an application and revoke the license of an RN who is required to register as a sex offender. To date, the Board has not yet addressed the issue of incarceration of licensees.

ISSUE #18: (DIFFICULTY IN TRACKING DISCIPLINARY CASES.) The BRN along with other health boards have to rely upon an outdated, limited and cumbersome tracking system called the “Consumer Affairs System” (CAS) that is managed by the DCA.

Staff Recommendation: *With the recent concerns raised by the State Auditor regarding a case management system for California’s courts, called the “California Court Case Management System, or CCMS, and its cost overruns and questions about the quality of the system, the DCA should be closely monitored in its efforts to implement an integrated licensing and case management system that could have significant impact on its 40 boards and bureaus. The DCA and the boards and bureaus together manage more than 2.5 million licenses, certificates and approvals in more than 100 businesses and 200 professional categories. The failure of such a new program for DCA could have vast impact on professional licensing and consumer enforcement efforts throughout the state and for those trying to enter the state to practice. There is no doubt that a new system is needed. The DCA over several years has made other attempts to implement a new computer system, but for varying reasons have not been able to move forward. The BRN should continue in its role to work collaboratively with the 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.*

BRN Response: The BRN plans to continue its work with DCA staff and vendors to assist in the BreEZE project. According to the tentative implementation schedule from DCA, BRN will be transferred to the new system in December 2012. Funds for the BreEZE were built into the BRN budget expenditures but it appears that DCA underestimated the costs and are looking into what options are available. This may have an impact on the existing BRN fund condition. The BRN looks forward to the implementation to assist with case and billing tracking, enhanced reporting and data analysis, and a consolidated applicant and licensee system.

SUBSTANCE ABUSE AND DIVERSION PROGRAM ISSUES

ISSUE #19: (EFFECTIVENESS OF DRUG DIVERSION PROGRAMS CALLED INTO QUESTION.) It is unknown how successful the BRN’s Drug Diversion Program is in preventing recidivism of those nurses who may abuse drugs or alcohol, and if the Diversion Program is effectively monitoring and testing those who participate in the program.

Staff Recommendation: *The Committee should consider requiring an audit of the BRN’s Diversion Program in 2012, along with the other health boards which have Diversion Programs, to assure that these programs are appropriately monitoring and treating participants and to determine whether these programs are effective in preventing further substance abuse. The BRN should also indicate to the Committee how the Uniform Standards are being implemented and if all Uniform Standards are being followed, and if not, why not.*

BRN Response: The Board believes accountability and transparency of the Diversion Program (the Program) is critical. Evaluations and audits are considered tools to be used to strengthen the Program

and enhance public protection. When the contractor, MAXIMUS was audited, the BRN was also audited as the vendors work cannot be separated from the BRN work. The BRN provided policy and procedural information to the auditors. The BRN staff provides oversight and direction, and determines that the mandates of the contract are being met as all aspects of the monitoring is done through the contractor. The Program has been audited three times in two years. The BRN recommends that the Program be audited again in three years, as outlined in SB1441, by an auditor that is acceptable to the Board. This timeframe will allow the BRN the opportunity to implement suggestions outlined in the previous audits, increase the level of participation, and obtain staffing to meet the new requirements.

According to NCSBN, who has done extensive research on Diversion Programs for nurses, some criteria for success of a Diversion Program include:

- **Large number of referrals** – California has one of the highest in the country.
- **Quick removal from practice** – RNs must immediately cease practice upon entering the program, unless they show documentation of having been monitored for a year under an equivalent program. They must also cease practice if they have tested positive for any prohibited substance, or admit to relapse. A Diversion Evaluation Committee (DEC) must approve the RN returning to practice. Usually the RN returns to work in approximately nine to 12 months, and may return to work only if they have been compliant with all of the terms of their contract, have been testing negative and have shown signs of embracing recovery.
- **Quickly addressing relapses** – Per the MAXIMUS contract, case managers must notify the RNs Work Site Monitor, the RN, and the BRN within one hour of relapse.
- **Relapses identified** – The BRN receives quarterly reports identifying relapses of all program participants. During the quarter ending in December 2010, 15 out of 668 (2.2%) participants relapsed. For the quarter ending in September 2010 there was a 4.4% relapse rate (30 participants). This is after the re-establishment of the required cut-off levels which never fell below D.O.T. standards. A relapse report is also provided to the BRN each month outlining which participant relapsed, how was it determined, if RN was working, when the RN was removed from work, and what was the outcome.
- **Low recidivism rates** – Less than 4% of the RN's that have successfully completed the program have relapsed and returned. The BRN keeps a running report as allowed by law.
- **Positive Audit Findings** – The three audits of the contractor in 2009, 2010, and 2011, reported positive findings.

Positive components of the BRN Diversion Program include:

- Early and immediate intervention
- Strict eligibility criteria
- Prohibiting RN from practicing until deemed safe by a panel of experts
- Development of rehabilitation plan contract between the participant and the Program
- Close monitoring of participants for compliance
- Worksite monitor required prior to job approval
- Participant involvement in Nurse Support Groups
- Stringent criteria for determining successful completion

The Program protects the public at a cost savings compared to the disciplinary process. If participants were not in the Program, they may still be working in the health care field with their substance abuse disorder, without being monitored, while waiting two to three years for the discipline process to complete. Upon entering the Program, the RN is monitored by a case manager, the Nurse Support Group, treatment center, therapist (if applicable), reports, drug testing and the DEC. When an RN enters the program, even though they are not working, they are drug tested a minimum of 24 times a year. This may be increased at the request of the DEC, the BRN Diversion Program Manager, or the need of the RN. When the RN returns to work the testing is increased to approximately 36 times per year. Despite the increase in testing, there has been no increase in the amount of relapses occurring.

The Uniform Substance Abuse Standards were developed in large part from the standards that were already incorporated into the MAXIMUS contract. Some of the Standards need regulation changes to be added to the contract, and are being addressed through the regulatory process. A strict drug testing requirement has always been a part of the Program. The Board is currently reviewing the drug testing requirements in the Uniform Standards and is making recommendations for changes. It has been questioned whether the number of required drug tests was based on any scientific evidence. The \$10,000 or more per year cost to participants who are not working would be prohibitive and would be counterproductive to their recovery.

DISCLOSURE POLICY ISSUE

ISSUE #20: (INCONSISTENT REPORTING OF PRIOR DISCIPLINARY OR CRIMINAL CONVICTIONS OF NURSES.) The BRN was criticized by the Media for not providing information on the correct status of the licensee, or if they had a prior disciplinary action or criminal conviction.

Staff Recommendation: *Statutory authorization should be granted to the BRN, similar to that of the Medical Board and other health boards, to disclose all of the above information which it currently provides on its Website, and also provide whether the status of the license of the RN is in good standing, and/or they have been subject to one of the above disciplinary actions or convicted of a crime in California or in another jurisdiction.*

BRN Response: The Board agrees that statutory authorization would be helpful in order to continue to disclose disciplinary action on the BRN Web site. The Board is currently revising the Complaint Disclosure Policy, and is also considering a timeframe for how long the disciplinary information would remain on the Web site. The BRN receives requests from previous disciplined licensees requesting that this information be removed, especially in cases where many years have passed, as they are having difficulty finding employment. However, any disciplinary action remains a public document regardless of the amount of time it is retained on the Board's Web site.

BUDGETARY ISSUES

ISSUE #21: (ARE RECENT INCREASES IN LICENSING FEES SUFFICIENT TO COVER BRN COSTS?) Is the BRN adequately funded to cover its administrative, licensing and enforcement costs and to make major improvements to its enforcement program?

Staff Recommendation: *The BRN should assure the Committee that with the recent fee increase it will have sufficient funds to cover its administrative, licensing and enforcement costs and to provide for adequate staffing levels for critical program areas if appropriate staffing is provided.*

BRN Response: Notwithstanding a significant drop in revenues, and with the return of the proposed \$15 million dollars loan to the General Fund, the BRN has sufficient funds to cover costs and to provide for adequate staffing levels for critical program areas as outlined in the Sunset Review Addendum, if staffing is provided.

ISSUE #22: (THERE IS STILL A SEVERE LACK OF STAFFING FOR BRN'S ENFORCEMENT PROGRAM.) The BRN is still suffering from backlogs in critical program areas and is still having difficulty shortening its time frame for pursuing disciplinary action against licensees because of the lack of staffing and the inability to hire for any new positions, even though additional staffing was granted to the BRN (but put on hiring freeze) and it appears to have sufficient funding to cover any additional staffing needs.

Staff Recommendation: *The BRN should express to the Committee its frustration in being unable to meet the staffing needs of its various critical programs, especially that of its enforcement program, and the impact that it will have on its ability to address the problems identified by this Committee, especially as it concerns its goal to reduce the timeframe for the investigation and prosecution of disciplinary cases.*

BRN Response: The Board takes it's mandate of public protection very seriously and continuously seeks to improve the effectiveness and efficiencies of all programs to better respond to California consumers. In response to the media attention in 2008 and 2009, the Board members, BRN and DCA staff worked zealously and diligently to develop a comprehensive plan to address the enforcement issues and set a CPEI goal of reducing the average disciplinary case processing timeframes from three years to 12 to 18 months. The BRN, in collaboration with DCA, projected and requested 63 additional positions to fully implement the plan. The number of staff was reduced by the Department of Finance to 37. This number has been further reduced by the 5% staff reduction directive from the Department of Finance.

Regulations were adopted, increasing the fees to pay for the additional staffing. Professional nursing organizations supported the fee increase, but expressed concerns that monies may go to reduce General Fund deficits, and now \$15 million dollars is proposed to be borrowed from the fund. Effective August 30, 2010 a hiring freeze was imposed and the BRN has not been allowed to fill the positions. The BRN recently received appropriate paperwork for filing a hiring freeze exemption, however, it takes approximately 4 to 6 weeks for exemption requests to be processed. In addition, three existing limited term positions in the Enforcement Division will soon be lost as the terms are going to expire. The BRN has exhausted all measures to keep these employees, and unless something is done immediately, the BRN will lose all three of these already trained and productive enforcement staff. In January 2011, the BRN was approved to use the Special Investigator classification, however, due to the hiring freeze, the BRN has been unable to hire for these positions.

The tragedy of all this is that in spite of the turmoil, upheaval, and controversy, the average case processing timeframe in 2009-2010 was 33 months and is projected to increase and consumers are still at risk. The BRN is in desperate need of more staff if we are to meet our mandate to protect the public.

ISSUE #23: (IMPACT OF THE RECENT PROPOSED BRN LOAN TO THE GENERAL FUND.) Will the Governor's recent proposed borrowing of \$15 million from the BRN's reserve account have an impact on the ability of the BRN to deal with some of the serious issues raised in this Paper?

Staff Recommendation: *No more loans from the reserve funds of the BRN to the General Fund, especially in light of the recent fee increase which the RN profession must now absorb. The RN profession will see little if any return on its investment to improve the operation of the BRN, especially in its enforcement program and in providing the resources and staffing it so sorely needs. The BRN should explain to the Committee what the impact will be to its overall Budget and the ability to hire new staff if the loan of \$15 million is made from its reserve fund. This of course is if the BRN is granted an exemption from the hiring freeze, otherwise new expenditures will not be necessary.*

BRN Response: A commitment has been made to the BRN that the loan will not impact operations and if the BRN is in need of the monies in the event additional staff are approved, it will be re-paid immediately. The BRN implemented a fee increase in January 2011 to pay for additional staff to handle the additional enforcement workload and to process cases in a timely manner. The BRN will not be able to handle the additional workload or decrease disciplinary case processing timeframes without the ability to hire additional staff immediately. The \$15 million dollar loan would leave the BRN with a very small 1.2 month reserve in 2011-12 and while this takes into account the 37 new positions being hired, it does not include the additional staff requested in the Sunset Review Report Addendum. The BRN would be relying on the commitment for the funds to be repaid immediately in the event these additional staff were approved.

**CONTINUED REGULATION OF THE PROFESSION BY THE
CURRENT MEMBERS OF THE BOARD OF REGISTERED NURSING**

ISSUE #24. (CONSUMER SATISFACTION WITH BRN IS LOW.) A Consumer Satisfaction Survey performed by the BRN over the past four years, shows that on average about 65% of consumers were satisfied with the overall service provided by the BRN. There was a higher satisfaction, almost 70%, if some disciplinary action was taken by the BRN.

Recommendation: *The BRN should explain to the Committee why it believes consumer satisfaction regarding the service of the BRN is still so low and what other efforts the BRN could take to improve its general service to the consumer. Does BRN believe that mediation could be used in certain circumstances to help resolve complaints from the general public regarding health care practitioners?*

BRN Response: While the BRN found an increase in consumer satisfaction ratings since the last Sunset Report in 2002, it is still low. The BRN believes it remains low because of the time it takes for disciplinary cases to reach resolution. Currently complaintants receive a letter when the case is opened, and may not hear again until the case is closed, which may be up to three years. The BRN is currently reviewing processes to identify how complaintants can be notified at times during the process, to assure them the complaint is being investigated. To date, the Board has not considered mediation of cases or alternative dispute resolution as we do not believe that the BRN has any types of cases that could be resolved through these methods.

ISSUE #25. (CONTINUED REGULATION OF RNs BY THE BRN.) Should the licensing and regulation of the nursing profession be continued and be regulated by the current board membership?

Recommendation: *Recommend that the nursing profession should continue to be regulated by the current BRN members in order to protect the interests of the public and be reviewed once again in four years.*

BRN Response: In light of the increasing complexity of nursing care, the continuing nursing shortage, the increasing number of nursing education programs, and the need to protect the public through licensure and enforcement activities, regulation of the profession is more important than ever. The Board concurs with the recommendation that the BRN should be reauthorized.