

BACKGROUND PAPER FOR THE Board of Registered Nursing

**(Joint Oversight Hearing, March 23, 2015, of the Senate Committee on
Business, Professions and Economic Development and the
Assembly Business and Professions Committee)**

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE CALIFORNIA BOARD OF REGISTERED NURSING

BRIEF OVERVIEW OF THE BOARD OF REGISTERED NURSING (BRN)

Functions of the BRN

The Board of Registered Nursing (BRN) regulates the practice of registered nurses (RNs) in California. BRN implements and enforces the Nursing Practice Act (Act), the laws and regulations related to nursing education, licensure, practice, and discipline.

The BRN's mission statement is as follows:

*The Board of Registered Nursing protects and advocates for the health and safety of the public by ensuring the highest quality registered nurses in the state of California.*¹

BRN regulates over 414,000 licensees in California.² In addition to licensing RNs, BRN issues permits for pending licensees and certificates to the following advanced practice registered nurses (APRN): nurse practitioners (NPs), nurse anesthetists, nurse midwives (NMs), and clinical nurse specialists. BRN also issues furnishing numbers to NPs and NMs with furnishing authority, maintains a list of psychiatric/mental health nurse specialists, and issues certificates to public health nurses.

BRN is responsible for setting educational standards for RN, NP, and NM programs, approving such programs, approving continuing education providers, evaluating and licensing RN and APRN applicants, administering discipline, managing a Diversion Program for licensees with chemical dependencies or mental illness, and providing stakeholder information and outreach.

¹ This revised mission statement is part of the Board's 2014-2017 Strategic Plan, which was completed in March 2014, following recommendations from the prior Sunset Review in 2011.

² California Board of Registered Nursing: Sunset Review Report 2014 (BRN Sunset), p. 104. There is some dispute as to this figure; the former business manager for BRN's data system, BreZE, states that this figure should be lower, but BRN disagrees. See The California State Auditor Report 2014-116 (Auditor Report), p. 70.

History of the BRN

California first tasked the University of California, Board of Regents with regulating nurses in 1905. BRN's functional predecessor, the Bureau of Registration of Nurses, was created in 1913, becoming the current BRN in 1975. The Board had been continuously in existence under various titles until December 31, 2011 when it was allowed to sunset. The sunset was the culmination of a series of events stemming from a 2009 newspaper story critical of BRN's enforcement efforts, "When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer."³ The investigative report charged that BRN often took years to act on complaints of egregious misconduct, resulting in nurses with histories of drug abuse, negligence, violence, and incompetence continuing to provide care. When BRN did act, it often took more than three years to investigate and discipline licensees.

In the wake of the *Los Angeles Times* revelations, the Executive Officer (EO) of BRN resigned and Governor Schwarzenegger replaced four board members and appointed two long-time vacancies. BRN's Supervising Nursing Education Consultant, Louise Bailey, became the EO. To adequately empower BRN to make the needed changes, the Legislature passed SB 538 (Price) in 2011. The bill authorized BRN's investigators to have the authority of peace officers in order to more effectively provide enforcement, in addition to extending BRN's sunset and making a number of other changes. Establishing peace officer status and the attendant pension benefits was contrary to Governor Brown's pension reform plans and he vetoed the bill, eliminating BRN at the end of 2011.

BRN became the Registered Nursing Program (Program) under an interagency agreement with the Department of Consumer Affairs (DCA) that provided for the continued administration of the Act "in an uninterrupted and stable manner until legislation re-establishing the Board takes effect."⁴ The Program allowed BRN staff to continue to operate administratively with Ms. Bailey directing activities as the Registered Nursing Program Manager.

The Board was reconstituted on February 14, 2012 and declared Ms. Bailey as the interim EO.⁵ She was voted unanimously as the permanent EO on July 27, 2012.

BRN did not get a quorum of board members, however, until May 2012, and the first Board meeting was held on June 21, 2012. Because of this delay, numerous actions that required Board input were backlogged.⁶ BRN's member positions were completely filled by February 2014.

Board Composition

BRN is composed of nine members: seven appointed by the Governor, one by the Senate Committee on Rules and one by the Assembly Speaker. Four must represent the public at large, two must be RNs, one an APRN, one an RN educator or administrator, and one who is an RN administrator of a nursing service.⁷ There is currently one vacancy to be filled by the Senate Committee on Rules.

³ See Charles Ornstein, Tracy Weber & Maloy Moore, *When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer*, *Los Angeles Times*, July 11, 2009, available at <http://www.latimes.com/news/local/la-me-nurse12-2009jul12.0,2185588.story>, accessed March 3, 2015.

⁴ Interagency Agreement Between the Department of Consumer Affairs and California Board of Registered Nursing, Dec. 14, 2011.

⁵ SB 98 (Committee on Budget and Fiscal Review), Chapter 4, Statutes of 2012.

⁶ BRN is statutorily required to have at least one meeting every three months. California Business and Professions Code (BPC) Section 2709. It may be argued that BRN missed only one board meeting during this transition period.

⁷ BPC § 2702.

The current members are as follows:

Name	Appointment Date	Term Expiration Date	Appointing Authority
<p>Raymond Mallel, Board President</p> <p>Mr. Mallel has been a private investor since 2001. He was previously the director of marketing and operations at Long Beach Mortgage Company and Ameritrust Bank from 1991 to 2001 and vice president of Loubella Extendables Inc. from 1971 to 1991. Mr. Mallel served as vice president of the State Bar of California Board of Governors from 1983 to 1986 and was chair of the Client Security Fund at the State Bar of California from 1986 to 1990. From 1982 to 1994, he served three consecutive terms on the Medical Board of California, including as president and vice president. Mr. Mallel is a co-founder and member of the International Executive Board for the Sephardic Educational Center in Jerusalem, Israel. He also serves as president of the Raymond Mallel Foundation.</p>	February 6, 2014	June 1, 2017	Governor
<p>Michael Deangelo Jackon, MSN, RN, CEN, MICN, Board Vice President.</p> <p>Mr. Jackson has been a clinical nurse II in the Department of Emergency Medicine at the University of California, San Diego Medical Center since 2000. He has been an adjunct clinical faculty member in the registered nursing program at Southwestern Community College and an operations supervisor at Scripps Mercy Medical Center. Mr. Jackson’s career also includes time as a mental health worker at Scripps Mercy Medical Center from 1992 to 2000 and service as a lance corporal in the United States Marine Corps Reserve from 1989 to 1993.</p>	May 10, 2012	June 1, 2016	Governor
<p>Beverly Hayden-Pugh, MA, RN</p> <p>Ms. Hayden-Pugh is vice president and chief nursing officer at Children's Hospital Central California. Ms. Hayden-Pugh began her career with Children's in 1983 as a staff RN in the pediatric/oncology unit. Since then, she has served in a variety of positions at the hospital, including as the gastroenterology and multispecialty clinic manager, administrative director of subspecialty clinics, and executive director of the ambulatory care division.</p> <p>Ms. Hayden-Pugh is a member of several professional and community organizations, including the Association of Nurse Leaders, American College of Healthcare Executives, and Nursing Leadership Council.</p>	August 20, 2013	June 1, 2015	Governor
<p>Elizabeth (Betty) Woods, RN, FNP, MSN</p> <p>Ms. Woods is a volunteer nurse practitioner at the Jewish Community Free Clinic in Rohnert Park, Ca. Ms. Woods was previously a labor representative with the California Nurses Association from 1994 to 2007, and worked as a NP at Kaiser Permanente, Santa Rosa from 1976 to 1994 in Family Medicine and as a member of the HIV Consult Team. From 1984 to 1994 she was an Adjunct Clinical Professor for NP students at Sonoma State University, and from 1982 to 1988, a NP Sexual Assault Examiner at Sonoma County</p>	February 6, 2014	June 1, 2018	Governor

<p>Community Hospital. Before earning her NP certification and MSN from Sonoma State University, Woods was an ICU and medical/surgical RN.</p>			
<p>Imelda Ceja-Butkiewicz</p> <p>Ms. Ceja-Butkiewicz has been a Project Specialist at Kern County Public Health Services Department since 1999. She has served in multiple positions at the Kern County Department of Public Health, including with the Medi-Cal Outreach Program, Maternal Child Disability Program, Child Health and Disability Program, Kern Access to Children’s Health Program, Child’s Dental Program, and Refugee Health Assessment Program. She is currently working with individuals living with HIV/AIDS.</p> <p>Ms. Ceja-Butkiewicz is a community advocate and has served on several professional and community organizations, including the Kern Homeless Collaborative, International Women’s Program, Central Democratic Party Committee, Democratic Women of Kern (past President), Inyo, Kern Central Labor Council and Service International Union local 521.</p>	<p>February 6, 2014</p>	<p>June 1, 2017</p>	<p>Governor</p>
<p>Jeanette Dong</p> <p>Ms. Dong is currently the Chief of Staff for Alameda County Board of Supervisor Wilma Chan. Previously she served as the Associate Vice Chancellor for Advancement and Workforce Development for Peralta Community Colleges.</p> <p>Ms. Dong was educated at U.C. Berkeley and Columbia University, with fellowships at Harvard University and with the Coro Foundation.</p>	<p>November 14, 2012</p>	<p>June 1, 2016</p>	<p>Speaker</p>
<p>Trande Phillips, RN</p> <p>Ms. Phillips has been a registered nurse at Kaiser Permanente Walnut Creek Medical Center in the pediatric-flex unit and the medical, surgical, hospice and oncology unit since 1983. She was a registered nurse at the Merrithew Memorial Hospital in Contra Costa County from 1979 to 1981 and the Wichita General Hospital in Texas from 1971 to 1972.</p>	<p>May 10, 2012</p>	<p>June 1, 2015</p>	<p>Governor</p>
<p>Cynthia Cipres Klein, RN</p> <p>Ms. Klein is a registered nurse with the Internal Medicine/Subspecialty Department of Kaiser Permanente Medical Group in Riverside, California. She has served in multiple positions with Kaiser, including as the RN charge nurse in urgent care from 2003 to 2005 and an ambulatory care RN team leader in family medicine, pediatrics, allergy and obstetrics and gynecology from 1998 to 2003. Ms. Klein worked as a RN supervisor for U.S. Family Care West from 1997 to 1998, as a general pediatric floor nurse at Miller’s Children’s Hospital in 1996, and as a RN lead for the Universal Care Medical Group from 1992 to 1995.</p>	<p>May 10, 2012</p>	<p>June 1, 2018</p>	<p>Governor</p>

The Board is vested with the authority to implement and enforce the Act, and appoints an EO to carry out its will administratively.⁸ The EO is responsible for managing a staff of 157, a budget of \$37.6 million, and must be a licensee, an uncommon requirement among all DCA health boards.⁹

Standing and Advisory Committees

BRN divides itself into five standing committees to focus on aspects of the Act's requirements. Each committee is comprised of two or more Board members and at least one staff liaison. The committees conduct public meetings, review and analyze issues, make enforcement decisions, and make recommendations to the full Board at least five times per 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.
- Diversion/Discipline Committee – Advises the Board on matters related to laws and regulations pertaining to the Diversion Program and Enforcement Division and reviews enforcement and diversion related statistics.
- Education/Licensing Committee – Advises the Board on matters related to nursing education, including approval of prelicensure and advanced practice nursing programs, the National Council Licensure Examination for Registered Nurses (NCLEX-RN), annual school survey data and reports, licensing unit policies and procedures, and continuing education and competence.
- Nursing Practice Committee – Advises the Board on matters related to nursing practice, including common nursing practice issues and advanced practice issues related to nurse practitioner, nurse-midwife, nurse anesthetist, and clinical nurse specialist 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.

⁸ BPC § 2708.

⁹ BPC § 2708(b). The requirement of a licensed nurse as the BRN's chief administrator poses a recruitment challenge for DCA. Comparative salaries for nurse administrator positions in private practice are significantly higher: Salary.com lists the median salary for "Head of Nursing" in Sacramento as \$213,000. The BRN's present EO makes \$130,000, the maximum allowable salary within the DCA's EO pay range (per DCA Division of Legislative & Regulatory Review). Following is a description for a "Head of Nursing" position: "Plans and directs all nursing personnel. Develops and implements nursing policies, objectives, and initiatives. Reviews nursing department operations to ensure compliance with established standards. Ensures that all patients receive the highest quality care. Requires a master's degree in area of specialty and at least 15 years of experience in the field or in a related area. Familiar with a variety of the field's concepts, practices, and procedures. Relies on extensive experience and judgment to plan and accomplish goals. Performs a variety of tasks. May provide consultation on complex projects and is considered to be the top level contributor/specialist. Typically reports to top management." See Salary.com, <http://swz.salary.com/SalaryWizard/Head-of-Nursing-Salary-Details-Sacramento-CA.aspx>, accessed March 9, 2015.

BRN is statutorily authorized to appoint Diversion Evaluation Committees and a Nurse-Midwifery Advisory Committee (NMAC).¹⁰

- Diversion Evaluation Committees (DECs) – Each DEC is comprised of three RNs, a public member, and a physician who each have expertise in substance use disorders or mental illness. Currently there are 14 DEC's throughout California that meet with Diversion Program participants on a regular basis.
- Nurse-Midwifery Advisory Committee (NMAC) –NMAC advises the Board on nurse-midwife practice and education issues. NMAC is composed of at least one NM knowledgeable about nurse-midwifery practice and education, one physician who practices obstetrics, one RN familiar with nurse-midwifery practice, and one public member.

The Board is also authorized, with the DCA Director's consent, to convene advisory committees as needed. Members of these committees may include a variety of experts and stakeholders invited by BRN. The following advisory committees have been created by the Board:

- Education Issues Workgroup (EIW), formerly the Education Advisory Committee – EIW was originally formed in 2002 to support the goals of the Governor's Nurse Workforce Initiative, a program to develop and implement proposals to recruit, train, and retain nurses. EIW is now a workgroup whose main task is reviewing the Annual School Survey, which collects performance and demographic data from approved California nursing programs. EIW includes representation from various prelicensure educational degree programs, nursing organizations, nursing employers, and state agencies.
- Nursing Workforce Advisory Committee (NWAC) –NWAC provides guidance to the Board on RN workforce surveys, recommends strategies to address disparities in workforce projections, and identifies 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.
- Nurse Practitioner Advisory Committee (NPAC) –NPAC advises the Board on NP education and practice issues. NPAC is comprised of NPs who represent NP educational programs, RNs familiar with NP practice and education, and representatives of NP organizations.
- Clinical Nurse Specialist Task Force (CNS) –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 Board on matters related to CNSs. The CNS Task Force includes representatives from education and different clinical areas of CNS practice.

Fiscal and Fund Analysis

As indicated by the BRN, revenue has been stable since FY 2011/2012 when it implemented its first fee increase in 19 years. However, expenditures have increased due to additional enforcement staff

¹⁰ BPC §§ 2770.2 and 2746.2.

and the costs to process increasing numbers of discipline cases. The statutory reserve fund limit for the BRN is 24 months.¹¹

At the end of FY 2013/14, the BRN had a fund balance of \$9.5 million dollars, which is a three month reserve. This reserve is projected to decline to less than one month in FY 2015/16. The goal of the BRN is to maintain a two to four month reserve, and is thus projected to fall below that goal in 2015/16. In FY 2008/2009 the BRN made a \$2 million dollar loan to the General Fund that was repaid in FY 2010/11 without interest. Another loan of 11.3 million was made in FY 2011/12. \$3 million of this loan will be repaid in FY 2014/15 and the remaining \$8.3 million is scheduled for repayment in 2015/16. The BRN reports that repayment of the loan is needed to fund approved Budget Change Proposals (BCPs) as well as to support existing services and maintain a minimal reserve.

Even with the loan repayments, the BRN indicates that it will still need additional funds from a fee increase in FY 2015/16 to ensure future financial stability. The BRN has included a column for FY 2016/17 in the table below to show the result if the loan repayment is not received and additional revenue is not obtained. If revenues decline further, the BRN believes that additional analysis of expenditures and reduction of temporary staff will have to be considered.

Table 2. Fund Condition (dollars in thousands)							
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14	FY 2014/15	FY 2015/16	FY 2016/17
Beginning Balance*	15,281	11,170	6,996	8,996	9,558	6,943	812
Adjusted Beginning Balance	--	2,177	416	545	--	--	-
Revenues and Transfers	22,207	32,163	32,123	33,816	31,257	31,225	31,223
Total Revenue	\$39,489	\$34,210	\$39,535	\$43,357	\$43,815	\$38,168	\$32,035
Budget Authority	28,926	28,399	29,277	34,522	36,872	37,356	38,047
Expenditures	28,347	27,214	30,539	33,799	36,872	37,356	38,047
Loans to General Fund	0	11,300	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0	0
Loans Repaid From General Fund	2,000	0	0	0	3,000	0	0
Fund Balance	\$11,142	\$6,996	\$8,996	\$9,558	\$6,943	\$812	\$-6,012
Months in Reserve	4.7	2.9	3.1	3.1	2.2	0.3	-1.9

* Beginning balance may include prior year adjustment not reflected in the table.

The following table shows the amount of expenditures in each of the BRN's program areas. The BRN does not break out administration costs but distributes them across all program components. During the past four years, as in the past, the BRN has spent over 75% of its budget on enforcement and diversion-related activities. The BRN indicates that this meets one of their primary objectives of providing patient protection by removing unsafe RNs from the workplace or restricting their practice. To enhance its enforcement activities, the BRN had a significant increase in the number of enforcement staff beginning in FY 2010/11 when it was approved for 37 positions over two years.

¹¹ BPC § 128.5.

Table 3. Expenditures by Program Component* (dollars in thousands)									
	FY 2010/11		FY 2011/12		FY 2012/13		FY 2013/14		Average % of Expend
	Personnel Services	OE&E **	Personnel Services	OE&E **	Personnel Services	OE&E **	Personnel Services	OE&E **	
Enforcement	6,254	15,146	5,455	13,436	3,839	14,037	6,318	14,145	67%
Examination	1,604	1,365	2,289	1,611	1,627	1,931	2,095	2,533	13%
Licensing	1,610	1,313	1,858	1,376	1,414	1,923	1,756	1,940	11%
Diversion	686	1,904	605	2,083	526	2,218	733	2,308	9%
TOTALS	\$10,154	\$19,728	\$10,207	\$18,506	\$7,406	\$20,109	\$10,902	\$20,926	100%

* Administration costs are incorporated in each program component.
** Operating Expenses and Equipment

Fee Schedule and Revenue

The BRN is a self-supporting, special fund agency that obtains its revenues from licensing fees. The RN license and all certifications, except NP and PHN, are renewable biennially. The primary source of revenues is renewal fees.

The fee schedule and revenue collected over the past four years is reflected in the chart below:

Table 4. Fee Schedule and Revenue (dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2010/11 Revenue	FY 2011/12 Revenue	FY 2012/13 Revenue	FY 2013/14 Revenue	% of Total Revenue
RN Application (Exam)	\$150	\$150	1,862	2,328	2,319	2,155	7%
RN Application (Endorsement)	\$100	\$100	696	1,138	1,132	1,126	4%
RN Renewal	\$130	\$150	15,159	23,846	24,068	25,808*	84%
Interim Permit	\$50	\$50	242	238	221	203	1%
Temporary RN License	\$50	\$50	217	286	270	293	1%
Clinical Nurse Specialist (CNS)	\$75	\$150	15	19	18	12	0%
CNS Renewal	\$75	\$100	76	113	115	136*	0%
Nurse Midwife (NMW)	\$75	\$150	3	6	5	5	0%
NMW Renewal	\$75	\$100	33	43	46	49*	0%
Nurse-Midwife Furnishing (NMF)	\$50	\$50	1	2	3	3	0%
NMF Renewal	\$30	\$30	11	11	11	12*	0%
Nurse Practitioner (NP)	\$75	\$150	62	96	105	110	0%
Nurse Practitioner Furnishing (NPF)	\$50	\$50	35	45	96	83	0%
NPF Renewal	\$30	\$30	159	167	177	206*	1%
Nurse Anesthetist (NA)	\$75	\$150	11	14	14	14	0%
NA Renewal	\$75	\$150	52	74	73	85*	0%
Public Health Nurse (PHN)	\$75	\$150	202	242	257	257	1%
Psychiatric/Mental Health Nurse	No Fee	No Fee	No Fee	No Fee	No Fee	No Fee	--

Continuing Education Provider (CEP)	\$200	\$300	52	56	48	48	0%
CEP Renewal	\$200	\$300	325	280	331	282*	1%
Initial Program Approval Application	\$5,000	\$5,000	n/a	n/a	n/a	15	0%
Continuing Program Approval	\$3,500	\$3,500	n/a	n/a	n/a	0	0%
Program Substantive Change	\$500	\$500	n/a	n/a	n/a	5	0%

* These totals include Revenue Collected in Advance as current reporting capabilities available to the BRN are not able to distinguish between revenue collected in FY 13/14 and applied to renewals for FY 13/14 or FY14/15, thus all revenue received in FY13/14 was included in FY13/14 YTD Revenue. As a result, renewals appear higher for FY 2013/14 than historically reported.

Cost Recovery and Restitution

BRN implemented a cost recovery program in 1994 which authorizes it to collect the reasonable costs of its investigation and enforcement against disciplined licensees.¹² The authorizing statute requires the Board to request restitution and gives the administrative law judge (ALJ) discretion to set the amount. The Board may reduce or eliminate, but not increase, the cost award.

There have been no significant changes to the BRN cost recovery processes since the last review. The cost recovery is executed through the Enforcement Division’s Legal Desk, and is agreed upon through stipulated agreements and/or probation requirements. Consequences for RNs not completing cost recovery include extending probation or placing a hold on the RN’s license until the payment is received in full. The amount of cost recovery ordered remained fairly consistent until FY 2013/14 when it increased 53% to over 1.8 million. The amount collected increased from 48% in FY 2010/11 to over 60% in FYs 2011/12 and 2012/13 and 51% in FY 2013/14.

Table 11. Cost Recovery	(dollars in thousands)			
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
Total Enforcement Expenditures	\$13,769	\$10,803	\$11,523	\$12,769
Potential Cases for Recovery *	1,165	1,448	2,110	2,060
Cases Recovery Ordered	264	215	279	428
Amount of Cost Recovery Ordered	\$1,097	\$958	\$1,197	\$1,836
Amount Collected	\$529	\$634	\$736	\$930
* “Potential Cases for Recovery” are those cases in which disciplinary action has been taken based on violation of the license practice act.				

Table 12. Restitution	(dollars in thousands)			
	FY 2010/11	FY 2011/12	FY 2012/13	FY 2013/14
Amount Ordered	n/a	n/a	n/a	n/a
Amount Collected	n/a	n/a	n/a	n/a

¹²The BRN does not have statutory authority to order restitution for consumers.

Staffing Levels

The BRN's nearly 160 staff works in four interdependent program areas:

- **Licensee and Administrative Services** – Provides assistance to the public and licensees through the information/call center, mail services, cashiering, and license renewals. It also handles BRN's personnel, budget, and information technology concerns and provides coverage of legislative and regulatory issues.
- **Licensing Program** – Reviews the qualifications of U.S. and international RN and APRN applicants. Staff interfaces with examination services vendors, domestic and international RN programs, and other states' boards of nursing.
- **Enforcement Division** – Handles the enforcement process from complaint through penalty and is comprised of five subdivisions: Complaint Intake, Investigations, Discipline, Probation Monitoring, and Diversion.
- **Nursing Education** – Staffed by Nursing Education Consultants (NECs) who assist new nursing schools through the approval process and monitor existing approved programs.

The BRN received 37 positions dedicated to enforcement as part of the Consumer Protection Enforcement Initiative (CPEI) in FY 2010/11, and received another 28 enforcement positions in 2014/15.¹³ The BRN believes these staffing augmentations will result in meeting enforcement timeline goals. However, the BRN believes that other programs require additional staffing to meet its targets. In its Sunset Report, the BRN reported that it requested 26 additional positions from the Department of Finance for two of its four programs.

Approval of Nursing Schools and Programs

BRN is required by law to approve pre-licensure nursing programs. BRN's approval ensures a program's compliance with statutory and regulatory requirements. Approval of APRN programs is voluntary and at the request of the program. Currently, there are 142 approved pre-licensure nursing programs and 25 approved advanced practice nursing programs, as follows:

Pre-licensure Programs

- 89 associate degree programs (11 private and 78 public)
- 37 baccalaureate degree programs (18 private and 19 public)
- 16 entry-level master's degree programs (8 private and 8 public)

APRN Programs

- 22 nurse practitioner programs (8 private and 14 public)
- 3 nurse-midwifery programs (3 public)

¹³ CPEI was DCA's initiative to overhaul the enforcement and disciplinary processes of the healing arts boards. The goal of this initiative was to reduce the average enforcement completion timeline from 36 months to between 12 and 18 months. See http://dca.ca.gov/about_dca/cpei/, accessed March 5, 2015.

Newly proposed and approved nursing programs have multiple visits by the Nursing Education Consultant (NEC) staff. Programs are reviewed prior to initial student admission, at the completion of the first academic year, just prior to the graduation of the first class, five years from the date of first student admission, and then every five years thereafter. Regularly scheduled continuing approval visits to established nursing programs are currently conducted every five years, and additional visits may be conducted as needed.

When an NEC finds a program in noncompliance, the program is placed on “deferred action” and is allowed a specific time to correct any areas of noncompliance. When a program is unable to correct the areas of noncompliance or demonstrates a lack of progress, the program is placed on “warning” status. Being placed on warning status is a rare and serious action that indicates the Board’s intent to close the nursing program.

Any programs not approved by BRN may not operate in California and its graduates may not sit for the nursing licensing exam.

Licensing

Registered Nursing (RN) license: RNs may apply for California license either by examination or by endorsement. Individuals seeking licensure by examination are required to meet BRN’s education requirements, which are verified by reviewing official school transcripts and/or the review of the nursing program curriculum, pass the national examination, and have a clear background.

Licensure by endorsement is available to applicants who are already permanently licensed in another state or U.S. territory. These individuals are eligible for licensure if they passed either the current national examination or its predecessor; possess an active, current and clear RN license, successfully completed California educational requirements, and have a clear background. Applicants licensed in other countries who have not passed the national examination are not eligible for endorsement and may become licensed through examination.

Clinical Nurse Specialist (CNS) Certification: CNSs are RNs with advanced education who participate in expert clinical practice, education, research, consultation, and clinical leadership. 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 specified coursework.

Nurse Anesthetist (NA) Certification: NAs are RNs who provide anesthesia services at the direction of a physician, dentist, or podiatrist. NA applicants must provide evidence of certification by the Council on Certification of Nurse Anesthetists and Council on Recertification of Nurse Anesthetists.

Nurse-Midwife (NM) Certification: NMs are RNs who are authorized, under the supervision of a licensed physician and surgeon, to attend normal childbirth and provide prenatal, intrapartum and postpartum care, including family planning care for the mother and immediate care for the newborn. 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. There is an equivalency method for applicants who completed a non BRN-approved midwifery program and who are not nationally certified.

NMs in California may apply for a NM furnishing number, enabling them to write a medication order and furnish drugs to a patient. To obtain a furnishing number, the NM must satisfactorily complete

physician and surgeon supervised experience in the furnishing or ordering of drugs or devices, as determined by the physician and surgeon, and complete an advanced pharmacology course. Upon completion of the course and notification to the BRN, the NM then applies to the Drug Enforcement Administration (DEA) to obtain a DEA number.

Nurse Practitioner (NP) Certification: NPs are RNs who possess additional preparation and skills in physical diagnosis, psycho-social assessment, and management of health-illness needs in primary health care. 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 NP, who has not been qualified or certified as a NP 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. There is an equivalency method for RNs who have completed a NP program that does not meet BRN standards. These applicants must submit verification of clinical competence and experience verified by a NP or physician.

NPs may apply for a NP furnishing number, enabling them to write a medication order and furnish drugs to a patient. To obtain a furnishing number, the NP must take an advanced pharmacology course and complete physician-supervised experience in the furnishing of drugs or devices. Upon completion of the course and notification to the BRN, the NP then applies to the DEA to obtain a DEA number.

Psychiatric/Mental Health Nurse Listing: 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 and submit verification of the required education and experience to the BRN. The BRN also accepts American Nurses Credentialing Center certification as a clinical specialist in psychiatric/mental health nursing. This voluntary listing enables the psychiatric/mental health nurse to receive direct insurance reimbursement for counseling services.

Public Health Nurse (PHN) Certification: PHNs provide direct patient care and services related to maintaining the public and community's health and safety. To be considered for BRN certification, the applicant must hold a baccalaureate or entry-level master's degree in nursing awarded by a school accredited by a BRN-approved accrediting body. Equivalency methods are provided for individuals whose baccalaureate or entry-level master's degree in nursing is from non-approved accredited schools and for those who have a baccalaureate degree in a field other than nursing.

Continuing Education Provider (CEP) Approval: The BRN regulates and approves RN CEPs. CEPs are required to provide courses that enhance the knowledge of the RN at a level above that required for licensure. A proposed course by a CEP is reviewed by BRN staff to ensure that it contains post-RN licensure content and is not for self-improvement, financial gain, or for lay people.

Continuing Education (CE) /Competency Requirements

RNs are required, upon renewal, to complete 30 contact hours of direct participation in a course or courses offered by an approved CEP.

Enforcement (Meeting Performance Measures/Target Dates)

The BRN's Enforcement Division protects the public by ensuring licensees' safe practice. The Division includes units responsible for receiving complaints, performing investigations, overseeing discipline cases, and monitoring RNs on probation.

The lifecycle of an enforcement action typically begins with a complaint, which is reviewed by the Enforcement Division's Complaint Intake Unit. If it appears a violation may have occurred, the complaint is transferred to the BRN's Investigation Unit, which determines if it should be investigated by internal, non-sworn special investigators in the BRN Investigation Unit or by DCA's Division of Investigation (DOI) sworn peace officers. If disciplinary action is warranted, the Discipline Unit at BRN processes disciplinary documents and monitors the case as it is transferred to the Attorney General's (AG's) Office for the filing of an accusation and prosecution. Cases that proceed from this point head to the State Office of Administrative Hearings (OAH) for a disciplinary hearing. Lastly, the case goes back to the Board for a final decision.

The BRN continues its efforts to meet the CPEI goal of completing discipline cases in an average of 12 to 18 months. While the BRN has not yet met these targets, there has been improvement. Currently the BRN is completing cases, on average, in approximately 22 months, as compared to over 36 months in the previous Sunset Review.¹⁴

The BRN reports that it has made improvements to its enforcement process since the last Sunset Review, including receiving approval for 28 additional enforcement staff in 2014, procedural changes and streamlining of internal enforcement processes, cross training and staff development, and increased outreach to stakeholders. The BRN's Executive Officer was also recently delegated authority to approve settlements for the revocation, surrender, or interim suspension of a license. Despite these improvements, however, the full Board is still facing a backlog of petitioners seeking reinstatement of a license or reduction of probation, and meets upwards of ten times per year to consider these requests.

Substance Abuse Diversion Program

The BRN's 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. The BRN relies on a contractor to provide the necessary oversight and treatment of its licensees. Those who have substance abuse problems can avoid license sanctions by taking part in a confidential "diversion" program of drug testing, treatment and practice restrictions.

The success and effectiveness of this program has been called into question. For example, in 2009 the *Los Angeles Times* detailed how the BRN's diversion program was largely unsuccessful because it had failed to quickly take action when nurses failed the program's requirements and were internally labeled "public safety threats." Moreover, it was pointed out that because the program is confidential, it is impossible to know how many enrollees relapse or harm patients. In July of 2008, the Medical Board's diversion program was eliminated because of its continued failures to provide the appropriate oversight and treatment of physicians who participated in this program. (It should be noted the Medical Board's Diversion Program was audited five times before it was ended.)

¹⁴ BRN does not have confidence in all data sets due to BreEZe, BRN Sunset, p. 127.

The BRN indicates that there have been over 1,893 RNs who have successfully completed the Diversion Program out of the 4,857 who have entered the program since 1985. Although BRN reports an unbelievably low relapse rate for participants,¹⁵ the success and effectiveness of its program has been called into question through newspaper articles¹⁶ and internal reviews.¹⁷ It should also be noted that the administrative costs for the Diversion Program are borne mainly by the BRN. Participants pay \$25 a month and the cost of random drug testing. Total costs for the Diversion Program have risen from \$1,391,156 in FY 2012/13 to \$1,445,958 in FY 2013/14.

In an attempt to provide uniform operational standards for health care boards' diversion programs, the DCA was mandated by legislation (SB 1441 (Ridley-Thomas) Chapter 548, Statutes of 2008) to put forth "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees" (Uniform Standards). The BRN has not adopted these Uniform Standards.

Public Outreach and Education

BRN communicates with its stakeholders through various mediums: its website, webcasting of Board meetings, an annual newsletter, presentations, and through public information queries. BRN reports that its website receives an average of 54,000 visitors per day.

¹⁵ BRN reports that its relapse rate was 6.7% for FY 2012/13 and 8.8% for FY 2013/14. BRN relies only on self-reporting for these figures, however. The National Institute of Health suggests that typical relapse rates are 40-60%. <http://www.drugabuse.gov/publications/addiction-science/relapse/relapse-rates-drug-addiction-are-similar-to-those-other-well-characterized-chronic-ill>.

¹⁶ Charles Ornstein, Tracy Weber & Maloy Moore, *When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer*.

¹⁷ Department of Consumer Affairs, Internal Audit Office, "Contract Compliance and Performance Audit of the Department of Consumer Affairs' contract with Maximus, Inc. for the Health Professionals Diversion Program," Audit No. 2009-101, June 2010.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

The BRN was last reviewed by the Senate Business, Professions and Economic Development Committee (Committee) in 2011. At that time, the Committee raised 25 issues with attendant recommendations. On November 1, 2014, the BRN submitted its new sunset report to the Committee which included actions it has taken to address these concerns.

Those items which were not addressed and remain of concern, as well as additional issues, are explored under the “Current Sunset Review Issues” section of this report. A chart has been provided as an addendum detailing the degree to which BRN satisfied 21 of 44 directives.

The following are some of the programmatic and operational changes the BRN reports to have made in response to the prior Sunset Review. Items not addressed are listed, as well.

- The Board approved an updated Strategic Plan in March 2014.
- The Board reorganized the Enforcement Division to create five major work units including Complaint Intake, Investigations, Discipline, Probation, and Diversion. Many procedural changes have been implemented to streamline internal processes and cross training of staff to be more efficient.
- Regulatory changes have been completed that include the delegation of authority to the Board’s Executive Officer to approve settlement agreements for revocation, surrender, or interim suspension of a RN license, expand the definition of unprofessional conduct and grounds for disciplinary action to facilitate and expedite obtaining records during an investigation, and require an ALJ to revoke a license, without a stay order, if a licensee violates codes related to inappropriate sexual contact or misconduct with a patient.
- The BRN kept the Education Advisory Committee and the Nursing Workforce Advisory Committee separate.
- BRN has completed the following research reports since 2010: a report analyzing recidivism data for nurses on probation in 2011, an analysis of the diversity of the RN workforce in California in 2012 with an update in 2013, and a survey of RNs postlicensure education. BRN continues to publish ongoing reports such as the biennial survey of RNs, a forecasting study, and the annual school survey. The BRN is currently working on a survey of newly licensed RNs and their perceptions of how clinical simulation and clinical experience during their education prepared them for working with patients upon employment. Other organizations have completed employer surveys on a regular basis, including employer past hiring and intentions for future hiring.
- BRN maintains its current prelicensure nursing program application process.
- Effective January 1, 2013, the BRN implemented a fee structure for new program applicants.

- In October 2012, the BRN returned to the five year approval visit schedule because it was found that with the longer visit cycle (every eight versus every five years), schools that had issues and/or non-compliance activities developed issues that were more difficult to resolve.
- The BRN has a Memorandum of Understanding (MOU) with the BPPE that outlines the powers of the BRN to review and approve schools of nursing and the powers of the BPPE to protect the interest of students attending institutions governed by the California Private Postsecondary Education Act of 2009.
- From July 2010 through June 2014, the following actions were taken by the Board:
 - 99 programs were granted Continuing Approval;
 - 14 programs were placed on Deferred Action to Continue Approval: Ten of these later rectified their issues and were granted Continuing Approval, two continue on Deferred Action, and two were later placed and continue on Warning Status with Intent to Withdraw Program Approval; and,
 - 4 programs were placed on Warning Status with Intent to Withdraw Program Approval. Two continue this status as of this date. One later rectified their issues and was granted Continuing Approval. One moved to Deferred Action and continues in this status to date.
- The Board does not place a notification of a program's Warning status where it lists approved programs on its website.
- The BRN takes immediate action when it becomes aware of any unapproved nursing program or any unlicensed or fraudulent activity.
- The BRN supports national accreditation for approval of pre-licensure nursing programs.
- BRN indicates whether a school is public or private on its website.
- The BRN continues to serve on committees, monitor and support transition/residency programs, and collaborate on the new graduate survey. There is a link to information about residency programs on the BRN website.
- The BRN continues to support and encourage diversity in the RN workforce and continues participation and collaboration with other stakeholders on this issue, but has not taken any concrete, programmatic steps to apply the results of its information.
- The standard contribution to the BRN Registered Nurse Education Fund has not been increased.
- The BRN continues to notify the public in a variety of ways about the Fund and other similar programs by making the financial aid information more prominent on the BRN website; sending out e-mail blasts; adding information on the homepage under "What's New" when application deadline dates are approaching; and making announcements at Board meetings under the Executive

Officer Report. Information and articles related to education funding support are also regularly included in issues of the BRN newsletter, the BRN Report.

- The BRN works with consumers, the California Department of Education, school nurses and nursing organizations, as well as other stakeholders, to address school health-related issues as they relate to RN practice.
- BRN began auditing CEs in July 2014 after a lapse of several years and it has not reviewed CEPs since the last Sunset Review in 2011.
- With the increased enforcement staffing, BRN believes it should be able to reduce its average disciplinary timeframe to 12-18 months.
- BRN has not pursued any legislation since the last sunset report.
- BRN completed the following regulation amendments: increase the level of reportable traffic infraction fines from \$300 to \$1,000 for RN renewal applicants, allowing the Board to focus on other, more critical enforcement cases; allowing delegation of certain functions to the Executive Officer which will shorten the timeframe for some cases; specifying certain acts related to investigations and failure to disclose as unprofessional conduct and grounds for Board disciplinary action; and which requires an ALJ to issue a proposed decision revoking the RN license, without a stay order, if the licensee is found to have engaged in sexual misconduct with a patient or was convicted of a sex offense.
- The BRN continues to communicate regularly with the DOI and AG's Office staff regarding case investigation and processing timeframes. The BRN and DOI continue to have problems obtaining documents and records including consents for release of medical records and receiving court and arrest records timely and cost effectively. These delays significantly impact the investigation completion timeframes.
- The Board has not yet updated the outdated Disciplinary Guidelines nor adopted the Uniform Standards for Substance Abusing Licensees.
- BRN is now a participating member of the NURSYS system to share licensing and disciplinary data.
- Receiving appropriate records from courts continues to be problematic.
- BRN is not conducting its own Interim Suspension Order hearings.
- BRN continues to work with DCA on BreEZe implementation issues.
- BRN's diversion program was audited in 2010.
- BRN has a disclosure policy, but not statutory authorization similar to that granted to the Medical Board of California.

- BRN's Consumer Satisfaction Surveys have low return rates and indicate low satisfaction with BRN.

CURRENT SUNSET REVIEW ISSUES

The following are unresolved issues and other areas of concern pertaining to the BRN, with suggestions for resolution.

ADMINISTRATION

ISSUE #1: (LEGISLATIVE EFFORTS) The BRN has not historically pursued legislation to change the Nurses Practice Act.

Background: The BRN has made references to several changes that would require legislation in its current and prior Sunset Reports. However, it has not sponsored legislation in at least the past five years. While BRN pursues minor and noncontroversial changes through Committee omnibus bills, stakeholders have been told by the Board that it believes it “cannot bring legislation forward.”¹⁸ This is not true; the BRN is authorized to sponsor legislation and is encouraged to do so in order to keep the Nursing Practice Act relevant and current. When asked why BRN is not active in this area, the Executive Officer responded because “it has historically not sponsored legislation.”¹⁹ This is a poor answer from the entity that is supposed to be the policy experts on nursing in state government; BRN should be driving changes and ensuring its Practice Act is dispositive.

Staff Recommendation: *The BRN should when necessary sponsor legislation necessary to keep its Practice Act current.*

ISSUE #2: (NURSE-MIDWIFERY ADVISORY COMMITTEE (NMAC)) The BRN has not allowed the NMAC to convene since 2011, even though there are important issues for nurse midwives (NMs) to address.

Background: The NMAC has not met since 2011, and BRN indicates that it has no plans to reconvene the committee due to funding concerns.²⁰ BRN states that any concerns relative to NMs are brought to the Nursing Practice Committee, and then to the full Board for consideration and action. However, NM stakeholders reported to the Legislature that their concerns have been dismissed at Nursing Practice Committee meetings.²¹ NM stakeholders present valid evidence of the need to have guidance related to the issues of laceration repair, physician supervision, and signatures on standardized procedures. It is BRN’s responsibility to address these matters in order to clarify practice responsibilities and ensure public health.

Failure to gather NMAC is particularly concerning because there is a lack of expertise related to the practice of nurse midwifery on the Nursing Practice Committee and the full Board. This may prove to be a more serious problem as BRN pursues potentially extensive changes to NM regulations; BRN created an internal staff workgroup in 2013 to review NM regulations that were last evaluated 30 years ago, and it is unclear how they are developing its recommendations.²² These changes are potentially wide reaching to the NM community and allied health care professionals.

¹⁸ Email from stakeholder to the author, March 8, 2015.

¹⁹ Email from the Assistant Executive Officer, March 10, 2015.

²⁰ Email from the Assistant Executive Officer, February 23, 2015.

²¹ Email from NM stakeholder to author, March 8, 2015.

²² Email from the Assistant Executive Officer, February 23, 2015.

Staff Recommendation: *The BRN should convene its NMAC to address issues specific to the NM community. BRN should ensure that decisions made regarding the practice of nurse-midwifery are informed by individuals actively engaged in the practice.*

ISSUE #3: (EDUCATION ISSUE WORKGROUP (EIW) AND THE NURSING WORKFORCE ADVISORY COMMITTEE (NWAC)) The EIW and the NWAC have had infrequent meetings and have not considered combining their efforts or addressing important issues as recommended by the BPED Committee at its last Sunset Review.

Background: Because both NWAC and EIW address common issues of nursing education, nursing shortages, and workforce disparities, it was recommended in the prior Sunset Review that the committees be combined.

BRN declined this suggestion because it believes in the value of the two committees' diverse memberships and did not want to combine them for fear of an unwieldy number of participants.²³ However, BRN has not formally convened these committees to do business in a timely manner since the last Sunset Review.²⁴

BRN posited that if the duties of NWAC were deemed sufficiently important, they may need statutory authority to designate the committee as "standing" and be granted spending authority, similar to the direction given by the Legislature for BRN to collect and analyze workforce data.²⁵ This is confusing, however; BRN's current standing committees are not statutorily authorized, and the duties of NWAC are arguably contained within the statute that BRN references containing spending authority to analyze workforce data. While BRN claims it has insufficient funding to convene the advisory committee, it has not sponsored legislation to increase the statutory spending limit.

It is unfortunate that BRN's workforce advisory committees, either separately or together, are not convening more frequently to provide timely advice because it is unclear how BRN is benefitting from the volumes of education and workforce reports it generates.²⁶ For example, in the prior Sunset Review, it was suggested that the committees devise strategies to address the lack of African American and Latino men in the nursing profession.²⁷ Four years later, the problem persists²⁸ and when asked if the Board was pursuing any initiatives to increase African American and Latino men in the workforce, BRN responded simply "No."²⁹ Additionally, while BRN reports on the increasing number of private,

²³ BRN Sunset, p. 160. There is no evidence that BRN considered reducing the overall participants of a combined committee while achieving the same viewpoint balance, however. BRN cites travel limitations, budgetary constraints, and limited staff resources for the lack of advisory meetings, but combining two committees and reducing membership would result in budgetary savings.

²⁴ EIW met once in 2011, but could not conduct business because it did not have a quorum. It did not meet again until 2014. EIW apparently communicated via email in the interim, but there was not a public forum. NWAC also met briefly (20 minutes) in 2011, and again in 2014. BRN Sunset, p. 161, and email to the Assistant Executive Officer confirming meeting dates and the existence of meeting minutes, Feb. 18, 2015, unanswered as of March 9, 2015.

²⁵ BPC § 2717 requires BRN to collect and analyze workforce data and authorizes it to spend \$145,000 towards these efforts.

²⁶ See BRN Sunset, "Major Studies Conducted by the Board," pp. 29 – 34.

²⁷ 2011 BRN Sunset Review, p. 9.

²⁸ See e.g., American Association of Colleges of Nursing, "Enhancing Diversity in the Workforce," at <http://www.aacn.nche.edu/media-relations/fact-sheets/enhancing-diversity>, accessed March 2, 2015.

²⁹ Email from the Assistant Executive Officer, February 23, 2015.

more expensive nursing programs, BRN does not know the debt load of the average graduate and how that might impact the administration of the nurse scholarship fund.³⁰

Staff Recommendation: *The BRN should reevaluate the use of its standing, statutory, and advisory committees to amplify the quality and frequency of advice given. BRN is advised to more actively engage in workforce initiatives related to the findings of its studies.*

BUDGET

ISSUE #4: (FEE INCREASE NEEDED?) The BRN reports that a fee increase will be necessary by FY 2015/2016.

Background: The BRN had a fund balance of \$9.5 million at the end of FY 2013/14, which represents a three month reserve. However, according to the Board's calculations, this reserve is projected to decline to less than one month in FY 2015/16. BRN has an outstanding \$11.3M loan to the General Fund, of which \$3M is projected to be repaid in the current fiscal year.³¹ Even with full repayment, however, BRN states that it will need additional funds in FY 2015/16.

The Department of Consumer Affairs (DCA) paints a more dire picture of the fund balance when calculating the fiscal impact of BreEZe, BRN's new information technology (IT) system; should the next contract phase be implemented, associated costs would plunge the fund into less than one month of reserve in FY 2014/2015.³²

The BRN projected that if it increases the RN license renewal fee to the current statutory limit of \$150, it would only be enough to sustain current expenditures for the next five years. Therefore, BRN recommended the following fiscal solutions:

- Increase the statutory limit for the following fees:
 - Establish RN renewal at \$210, with a ceiling of \$500;
 - RN examination application, from \$150 to \$300;
 - RN endorsement application, from \$150 to \$300; and,
 - International RN exam and endorsement application, from \$150 to \$500.

- Provide statutory authority for the BRN to charge a \$75 NP renewal fee with a ceiling of \$150.

The BRN's proposed solutions to its budget shortfalls are all statutory, yet there are 23 categories of fees that the Board could increase through regulations:

³⁰ Email from the Assistant Executive Officer, February 23, 2015.

³¹ BRN Sunset, p. 92. The report also notes that "There has been discussion to have an additional \$6M accelerated for repayment in FY 2014/15 and the remaining \$2.3M in FY 2015/16. However, to date this has not been scheduled so it is not included."

³² Board of Registered Nursing Fund Analysis: Governor's Budget w/ BreEZe SPR 3.1 Release 1, distributed February 24, 2015.

Fee description	Current fee	Statutory maximum
RN renewal fee	\$130	\$150
Penalty fee for failure to timely renew a license	\$65	Not more than 50% of the regular fee, but not less than \$37 nor more than \$75
Application fee for continuing education provider approval	\$200	\$300
Biennial continuing education provider approval renewal fee	\$200	\$300
Penalty fee for failure to renew a continuing education provider	\$100	Not more than 50% of the regular renewal fee, but not less than \$100 nor more than \$150
Fee for processing endorsement papers to other states	\$60	\$100
Certified copy of a school transcript	\$30	\$60
Duplicate license fee	\$30	\$50
Fee for evaluation of qualifications to use the title “nurse practitioner”	\$75	\$150
Application fee for certificate as a nurse midwife	\$75	\$150
Biennial nurse midwife certificate renewal fee	\$75	\$150
Penalty fee for failure to timely renew a nurse midwife certificate	\$37	50% of the renewal fee in effect on the date of the renewal of the license, but not less than \$25 nor more than \$50
Fee for application for nurse midwife equivalency examination	\$100	\$200
Application fee for nurse anesthetist certificate	\$75	\$150
Biennial nurse anesthetist certificate renewal fee	\$75	\$100
Penalty fee for failure to timely renew a nurse anesthetist certificate	\$37	50% of the renewal fee in effect on the date of the renewal of the license, but not less than \$25 nor more than \$50
Application fee for public health nurse certificate	\$75	\$150
Application fee for clinical nurse specialist certificate	\$75	\$150
Biennial clinical nurse specialist certificate renewal fee	\$75	\$100
Penalty fee for failure to timely renew a clinical nurse specialist certificate	\$37	50% of the renewal fee in effect on the date of the renewal of the license, but not less than \$25 nor more than \$50

Certified Copy of School Transcript	\$30	\$50
Duplicate license	\$30	\$50
Verification of CA RN licensure	\$60	\$100

Neither BRN’s 2014 or 2015 rulemaking calendars include proposed regulations to increase any fees, nor was there any discussion in BRN’s Sunset Report of raising any other fees (besides RN) to their statutory limits. BRN is also charging \$10 for a copy of test results for which no statutory authorization can be found.

The Board does not elicit confidence in their budget controls: the Board does not address why it needs statutory authority to increase fee limits when the majority of its existing fees may be increased by regulation, it charges an unauthorized fee, and it does not optimize its cost recovery mechanisms (see discussion of next issue).

Staff Recommendation: *The BRN should explain to the Committees the current situation which exists regarding its fiscal condition and what action is anticipated to deal with its anticipated deficit.*

ISSUE #5: (COST RECOVERY OF THE BRN.) The BRN still has difficulty in obtaining cost recovery and may not be utilizing all of the resources available to it to collect outstanding cost recovery orders.

Background: The BRN reported no significant changes to the cost recovery processes since the last sunset review; orders for recovery jumped 53% from \$1.2M in FY 2012/13 and to \$1.8M in FY 2013/14. In response to a query regarding the difference, BRN replied, “Our staff reviews the cost recovery orders made by ALJ’s and may discuss what we believe to be discrepancies. It is sometimes difficult to determine the rationale used by the ALJ to come up with the cost recovery order.” The BRN indicated that they plan to contact the Office of Administrative Hearings and discuss possible training opportunities between staff to stabilize expectations and procedures.³³

While substantial sums have been levied, the BRN reports that it has “extreme difficulty” obtaining full cost recovery.³⁴ In 2012/13 the Board received payment on 60% of orders, and 51% in FY 2013/14. The Board reports it has a high success rate when it holds a license renewal until payments are received, but ample amounts remain uncollected. The Board reported in its Sunset Review Report that it does not have the authority to use the Franchise Tax Board (FTB) to assist in cost recovery as it does for citations and fines. However, when pressed, the BRN reconsidered: “We may have been working under old misinformation. We are looking into and have already initiated one cost recovery request with FTB. If successful, we will use this as an option in the future.”³⁵

More aggressive recovery efforts may help the Board rationalize its enforcement budget and forestall the need for fee increases. In FY 2013/14, BRN exceeded its Attorney General costs by over \$3M and the Office of Administrative Hearings costs by \$548,000. While these overruns do not place the Board’s enforcement activity in jeopardy, because it may request current year enforcement expense augmentations, it does accelerate its fund decline.³⁶

³³ Email from the Assistant Executive Officer, February 13, 2015.

³⁴ Email from the Assistant Executive Officer, February 23, 2015.

³⁵ Email from the Assistant Executive Officer, February 10, 2015.

³⁶ “The Healing Art programs within the Department [DCA] have special budget bill language that allows for current year augmentations to their AG and OAH budgets. The Board has utilized this language in FY 2010/11, FY 2012/13, FY

Staff Recommendation: *The BRN should explain why it is unable to collect on its cost recovery orders and what steps could be taken to improve uncollected moneys.*

STAFFING

ISSUE #6: (INCREASED STAFFING NEEDED?) The California Auditor has indicated that the BRN has not adequately justified the need for more staffing because they cannot prove that they are managing its current workforce adequately.

Background: In its Sunset Report, the BRN reported that it requested 26 additional positions from the Department of Finance for its four programs. At the same time the BRN was preparing its Sunset Review Report, the California State Auditor was performing the audit on BreEZe, as discussed in the next issue. In the course of gauging the new IT system’s impact on the timely processing of applications, the Auditor determined that the BRN could not justify its need for new positions because the BRN could not prove that it is managing its current workforce effectively. The Auditor found that the license processing timeframe data provided for the Sunset Report were not accurate,³⁷ and the workforce analysis presented by the Board was out of date.³⁸

In response to these criticisms, the BRN has taken steps to improve its workflow and justify its workforce requests. The BRN reports that it has met with DCA’s Strategic Organization, Leadership, and Individual Development (SOLID) unit and identified a plan to evaluate the business processes in the Licensing Program beginning in early March 2015 and establish workload data in support of staff resource requests.³⁹ The BRN has also made smaller changes to increase efficiencies, such as changing its practice of assigning license applicants to evaluators based on the alphabetical order of applicants’ names to assignment based on dates.

However, the BRN does not appear to be accepting or fully evaluating all suggestions to improve operations. In February 2014, the DCA provided the BRN with supplemental staffing from its own staff and the Bureau of Automotive Repair to assist with licensing backlogs. After five months of assisting and observing the BRN’s business processes, the team submitted 13 suggestions to the BRN’s Executive Officer.⁴⁰ These suggestions ranged from “monthly check that all transcripts are in alphabetical order” to “forward fingerprint cards submitted by license applicants to the California Department of Justice for clearance once cashiering confirms payment of the applicable fee [to save processing time].” As of November 2014, the BRN said it was considering the latter suggestion but had not yet implemented it, and other suggestions were either in place or were too labor-intensive to consider. In some instances, the BRN did already have in place what was suggested: one of the recommendations was for BRN to generate procedure manuals because it was observed that “no two people process applications the same way.”⁴¹ The BRN has had such manuals in place since 2005, but

2013/14. To the extent that the Board was able to redirect savings from other line items to offset cost overages to their AG and OAH budgets, the AG/OAH augmentation requests may not have reflected the full amount of their actual AG/OAH overage.” Email from DCA, February 13, 2015.

³⁷ Auditor Report, p. 65.

³⁸ Auditor Report, p. 72.

³⁹ Email from the Assistant Executive Officer, February 13, 2015.

⁴⁰ Memo from Awet Kidane, Chief Deputy Director of DCA to Louise Bailey, Executive Officer, BRN, regarding Process Improvement Suggestions, June 30, 2014.

⁴¹ Memo from Awet Kidane.

it did not address the underlying concern of why staff takes such a varied approach and whether it should investigate best practices to streamline and standardize application processing.

Staff Recommendations: *The BRN should work closely with SOLID to optimize and standardize transaction processes, workload and staffing issues and ensure all recommendations are implemented.*

LICENSING AND PRACTICE ISSUES

ISSUE #7: (BreEZe IMPACT ON LICENSE PROCESSING) The California State Auditor has indicated that the substantial delays which the BRN encountered in the processing of potential licensee applications from October 2013 to June 2014 were not all directly attributable to the implementation of BreEZe, but were rather due to the BRN not tracking the processing of applications, adequately assessing its workload, and using its staffing effectively.

Background: The BRN licenses over 414,000 licensees in ten categories. Performance targets for licensing applications are as follows:

- Within 90 calendar days of receipt of an application for original licensure as a RN, the Board shall inform the applicant in writing that the application is either complete and accepted for filing or that it is deficient. In the case of a deficiency, the Board shall inform the applicant what specific information or documentation is required to complete the application.
- Within 390 calendar days from the date of filing of a completed examination application for original licensure as a RN, the Board shall inform the applicant in writing of its decision regarding the application. This time period applies to applicants whose application is complete on the examination deadline date and who take the first available examination.
- Within 365 calendar days from the date of filing a completed application for original licensure as a registered nurse without examination, the Board shall inform applicant in writing of its decision regarding the application.
- Incomplete applications are abandoned after one year.⁴²

BreEZe was designed to be the DCA's enterprise licensing and enforcement IT system and was touted as a much-needed replacement that would provide numerous efficiencies and previously unavailable functionalities. The BRN was among the first boards to transition.

It appears that prior to BreEZe implementation in October 2013, the BRN was able to complete applications within suggested timeframes, though data reporting is incomplete in some categories.⁴³ After BreEZe implementation, issues with the system's functionality and staff adaptation caused significant delays. One particular source of hardship was the lack of interoperability between BreEZe and the nurse licensing exam vendor, which caused the failure of examination applicants to receive their Authorization to Test documents. Processing the documents had to be done manually and caused

⁴² 16 California Code of Regulations (CCR) Section 1410.1

⁴³ BRN Sunset, pp. 107- 112.

a great deal of extra work for BRN staff. To compensate for unforeseen delays, BRN was provided extra staff by DCA through June 2014. During this time, the BRN reports that:

The average processing times from receipt of application to examination eligibility for RN examination applicants doubled from 40 days for FY 2011/12 and 37 days for 2012/13, to 82 days for October through June in FY 2013/14. While the actual amount of increase in processing timeframes for all license/certification types varies, which include time from the receipt of application to issuance of a license or certification, the trend for increased processing time post-BreEZe is consistent.⁴⁴

The BRN reported that it was self-sufficient and meeting its target timeframes as of October 30, 2014.⁴⁵

The California State Auditor reviewed BRN's experiences with BreEZe and characterized its impact on BRN's license processing very differently. The Auditor found that although the Board attributed its processing inefficiency to BreEZe, the Auditor was unable to substantiate those claims, and BRN was actually processing certain applications faster with BreEZe than before.⁴⁶ The Auditor also concluded that BRN does not adequately track the time it takes to process applications and cannot adequately assess its workload and whether it is using its staff appropriately.⁴⁷ The report further noted that data tracking deficiencies pre-date BreEZe, which calls into question the veracity of all data provided in prior Sunset Reviews:

...BRN could provide little evidence demonstrating that it tracks the timeliness of its application processing. For instance, BRN officials provided examples of some reports they said they had used before implementing BreEZe to track the timeliness within which BRN processed applications. However, we found these reports to be of limited value for assessing specific application processing times. For example, the reports generally presented information on the number of applications received and processed but did not contain the average number of days it took to process applications by type. Only one report that BRN provided presented information on the average number of days it took to process applications; however, again this report did not present these averages by type of application, thus hindering BRN's ability to identify which types of applications take staff longer to process than others. Further, in providing us with this report, BRN officials informed us that the average number of days for processing was overstated, calling into question the accuracy of the data.⁴⁸

Staff Recommendation: *The BRN should comply with the following Auditor's recommendations to ensure it has adequate data to effectively use its resources and manage its workload:*

- *Formally track and monitor the timeliness of its processing of applications by type and the cause of any delays.*

⁴⁴ BRN Sunset, p. 101.

⁴⁵ BRN Sunset, p. 100.

⁴⁶ Auditor Report, pp. 64, 66.

⁴⁷ Auditor Report, p. 63.

⁴⁸ Auditor Report, p. 64.

- *Formally track and monitor its pending workload of applications by type and original receipt date.*
- *Conduct an analysis no later than June 30, 2015, of its application processing since implementing BreZE in order to identify the workload capability of each of its units, such as the licensing support unit; to the extent it determines additional resources are necessary, BRN should submit a request for these resources that is appropriately justified.*⁴⁹

ISSUE #8: (CONSIDERATION OF MILITARY EXPERIENCE) The BRN has failed to adequately review, monitor and provide assistance to potential military candidates (veterans) for possible licensure as required by law.

Background: California is home to over 1.8 million veterans, representing 8.3 percent of the total U.S. veteran population. Seventy-two percent of the veteran population is fifty years of age or above, and the number of veterans 85 years of age or older is projected to increase 20% between 2010 and 2019. The California Department of Veterans Affairs (Cal Vet) anticipates receiving an additional 35,000-40,000 discharged members of the armed services each year for the next several years – more than any other state. According to Cal Vet, historically, the largest demand for benefits and services for veterans occurs immediately after discharge and again as the veteran population ages and requires greater access to medical facilities and long-term care services.

According to a January 2013 memorandum prepared by the Senate Office of Research (SOR), titled *Employment Opportunities for (Semi-Skilled or Unskilled) Veterans*, California does not provide a coordinated, integrated system that streamlines employment-related services to veterans. According to SOR, veterans find many services fragmented and without a single point of entry. SOR also examined the need to facilitate veterans who want to receive licensure or certification (academic) credit for military education, training, and experience.

Business and Professions Code § 35 provides that:

It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in this code shall provide for methods of evaluating education, training, and experience obtained in the armed services, if applicable to the requirements of the business, occupation, or profession regulated. These rules and regulations shall also specify how this education, training, and experience may be used to meet the licensure requirements for the particular business, occupation, or profession regulated. Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. Each board shall perform the duties required by this section within existing budgetary resources of the agency within which the board operates.

In October 2012, DCA released its *Report to the California State Legislature: Acceptance of Military Experience & Education Towards Licensure*. According to the report, nine of DCA’s licensing

⁴⁹ Auditor Report, p. 78.

programs have specific provisions in their statutes and regulations that authorize the acceptance of military experience or education towards licensure. Those programs include the Bureau of Automotive Repair, Board of Barbering and Cosmetology, Board for Professional Engineers, Land Surveyors, and Geologists, Board of Pharmacy, Physical Therapy Board of California, Board of Registered Nursing, Respiratory Care Board, Bureau of Security and Investigative Services and Board of Vocational Nursing and Psychiatric Technicians. Many more programs also have broad discretion in approving credit earned in the military towards licensure.

The BRN is under a mandate to evaluate and credit military experience and training towards RN licensure.⁵⁰ Until 2000, there were parallel training requirements in the military and civilian worlds to qualify for the RN license examination. The BRN adopted regulations in 1976 and 1985 that specifically identified military titles and supplemental experience that would be exhaustive of BRN requirements. In 2000, BRN determined that the military coursework had changed and was no longer directly transferrable. The BRN then updated the regulations for evaluating military training to be broadly descriptive, which made identifying any specific relevant military coursework difficult. The BRN has not evaluated military coursework since, although the Board reports they were told by military representatives in 2010 that the military does not have a directly comparable RN training program.

The BRN has effectively delegated the duty of identifying eligible military coursework to approved RN programs, for which BRN is required to approve the curriculum. However, according to the Executive Officer (EO) of the BRN, the Board does not know to what extent, if any, schools are providing credit for military experience and education. The EO stated that BRN has never spoken to schools about accepting military coursework and experience for credit, nor has the BRN suggested which military coursework may be transferrable. This raises a concern about compliance, because those schools may not have sufficient incentives to accept military credit because it would cause students to spend less time and money (especially lucrative GI Bill funding) on their programs.

In lieu of BRN providing any direct assistance to military applicants, the BRN directs applicants to the Board of Vocational Nurses and Psychiatric Technicians (BVNPT). The BVNPT has identified a direct pathway to licensure as a vocational nurse from military service. If a military applicant is lacking coursework, the BVNPT identifies which courses they need to be eligible to sit for the licensing exam. The BRN noted that after gaining LVN licensure – credited in part to their military training – the military applicant could take a LVN to RN "bridge" program, which supplements the applicant's LVN training to be eligible for the RN exam.

The BRN insists that they are helping military applicants by rerouting them towards the LVN licensure so they can get a job as soon as possible, but if a military applicant wants to become an RN directly, the BRN has little information to give. The BRN does not have any information regarding what additional coursework applicants may need based on their military transcripts, about which schools (if any) give credit to military education and experience, and which schools give more credit to military coursework than others. The BRN does, however, provide assistance to non-military applicants. Upon receipt of an inadequate application from an out-of-state or international applicant for licensure, the BRN reports that it notifies the applicants of his or her transcript deficiencies and recommends supplemental coursework. The BRN did not offer an explanation for the discrepancy.

⁵⁰ BPC §§ 35, 710, 2736.5.

Staff Recommendation: *The BRN should provide a much more comprehensive evaluation of veterans for potential licensure including evaluating prior military credentials and experience and determining what coursework may be applicable rather than just deferring their responsibility to the RN programs and referring potential candidates to the BVNPT.*

ISSUE #9. (EXPERIENTIAL LEARNING) The BRN does not assess the competency of a candidate for licensure based on prior experience.

Background: The Nursing Practice Act contains conflicting statutes related to the qualifications for California licensure. The BRN currently requires that an applicant possess 810 hours of supervised clinical practice and an equal number of theoretical instruction hours in qualified subjects. The BRN also requires that all schools provide clinical instruction in all phases of the educational process. Thus, academic and clinical instruction is required concurrently, and it is expected that applicants derive all qualifications for licensure from the four corners of an approved nursing program.

Unfortunately, existing law elsewhere conflicts with this directive. Current law also states that the BRN shall require approved schools to "give student applicants credit, in the field of nursing, for previous education and the *opportunity to obtain credit for other acquired knowledge by the use of challenge examinations* or other methods of evaluation."⁵¹ This code section also directs the BRN to develop regulations to determine "the amount of credit which is to be given for *each type of education*," presumably accommodating education beyond the classroom.

However, the BRN promulgated regulations that delegated the responsibility to determine credit to approved schools, and the BRN states that they do not believe any schools grant credit or allow testing to prove skills or knowledge based on prior professional experience.

The BRN argues that there is no way for it to assess competency based on experience, and that requiring identical education is the only way to ensure patient safety. However, current law appears to require that the Board find a way to do this, and there are certainly tests and supervised practice situations available for individuals to prove themselves.

Continuing this concept, if BRN allows candidates for licensure to qualify through experiential learning, then BRN should allow for reciprocity based on experience, regardless of the applicant's formal education.

The BRN currently does not have statutory authority to approve California licensure for individuals who have graduated from nursing programs with different educational requirements, but have an otherwise spotless professional background. However, other DCA health boards have been given this discretion and approve individuals who successfully practice in California. These boards include the Board of Behavioral Sciences, the Psychology Board, the Speech-Language Pathology and Audiology Board, the Veterinary Medicine Board, and notably, the Medical Board of California.

With potential nursing shortages due to the aging population and the continued rollout of the Affordable Care Act, allowing clinically proven nurses from other states to practice in California will ease the burden of care on the current licensee population.

⁵¹ BPC § 2786.6.

Staff Recommendation: *The BRN should develop guidelines for approved schools to credit experiential knowledge and ensure that such guidelines are followed. The BRN should also work with the Legislature to determine minimum safety requirements towards California licensure for graduates of unapproved educational programs.*

ISSUE #10. (FINGERPRINTING) The BRN may not have updated fingerprints for those who were licensed from 1990 to 2005.

Background: All RN applicants have been required to submit fingerprints as part of their initial application since 1990. BRN submits these fingerprints to the Department of Justice (DOJ) and the Federal Bureau of Investigations (FBI) to check prior criminal history and receive notifications of subsequent criminal activity. In 2005, the Department of Justice transitioned to a new, electronic fingerprint system from the previous “hard card” files. Some of the “hard cards” may not have been transferred to the new system, and BRN reports that it has a population of licensees from 1990 through 2005 that require re-fingerprinting.

BRN reports that it is working with DCA and DOJ to determine if they have correct data for all licensees from this time period, but that it is difficult to determine who has fingerprints in BreZe.

Staff Recommendation: *The BRN should identify all licensees who may need to have their fingerprints updated and have them resubmit their fingerprints by the end of 2015.*

NURSING EDUCATION AND PROGRAM APPROVAL

ISSUE #11: (DELAYS IN APPROVING NURSING SCHOOL PROGRAMS) The BRN reports that shortages of Nursing Education Consultants (NECs) has delayed the acceptance of applications for new nursing programs between June 2011 and April 2013.

Background: According to the BRN, NECs are a vital part of BRN’s workforce, carrying out the BRN’s statutory mandate to approve, inspect, and determine nursing programs’ ongoing compliance with education laws and regulations. NECs also serve as Board Committee liaisons, represent the BRN at various health care-related activities, respond to public inquiries, conduct research, handle legislation, and consult with Board members and staff in all program areas.

An NEC must hold a Master’s Degree, have an active RN license, and five years’ nursing experience. The BRN notes repeatedly that shortages of the NECs have negatively impacted its administrative functioning, even halting the acceptance of applications for new nursing programs between June 2011 and April 2013.⁵² The BRN attributes the difficulty of recruitment and retention to inadequate salaries compared to private practice and other RN positions within state government.

⁵² See BRN Sunset Report, pp. 98, 163, and 197. “Due to the high number of existing and new RN programs statewide requiring monitoring and the severe shortage of NECs, the BRN instituted a temporary suspension of accepting and reviewing Feasibility Studies for proposed pre-licensure RN programs.” BRN received authorization to hire for an additional 4 NECs between 2010-2012, however, and did not submit requests for additional NECs until FY 2013/14, after reviewing resumed.

The BRN states that it is working with the DCA and the State Personnel Board to reconcile salary differences. In the meantime, the Board has not engaged in other means of attracting talent, such as alternative working arrangements. Comparatively lower salaries are also an issue with nursing instructors, but many instructors have managed to compensate for the difference by teaching part-time and working in private practice. Although the BRN has a successful NEC who works part-time as a retired annuitant,⁵³ it resists a full discussion of job-sharing; the BRN states that it would be “very difficult” to assign other NECs as backup.⁵⁴ When pressed, the BRN acknowledged that despite the salary, they have an adequate supply of NEC candidates and do not need to explore alternative working arrangements.

Staff Recommendation: *The BRN should reconsider energy spent on NEC salary concerns, given the Board’s projected budget shortfalls and the absence of actual recruitment problems. If recruitment and retention again become an issue, the BRN should fully explore alternative working arrangements for NECs. The BRN should also reevaluate NEC workload and pare responsibilities down to NECs’ core functions relating to program approval and compliance, and consider delegating other duties, such as public inquiries and legislation, to less specialized staff.*

ISSUE #12. (POSTING NURSING PROGRAM INFORMATION) The BRN has not made important information such as program accreditation, retention and attrition rates available to students as recommended by this Committee in 2011.

Background: In an effort to better inform potential students of the quality of pre-licensure nursing programs, this Committee recommended that the BRN provide additional information on its website such as student completion rates and accreditation for approved schools. The BRN already collects much of the information requested, but presents it in the aggregate as part of its Pre-Licensure Nursing Program Annual School Report.

While the BRN states that it “strives to be transparent and provide the public with information whenever possible,” it asserts that the information it collects related to program retention and attrition rates is not public because of agreements made with the schools.⁵⁵ The BRN asserts that much of the information is “generally available” from the schools individually, and the effort involved in making the information available exceeds existing resources.

Inasmuch as it is the BRN’s goal to “inform consumers, licensees, and stakeholders about the practice and regulation of the profession,”⁵⁶ it is doing potential licensees a disservice by withholding valuable information on educational programs.

Staff Recommendation: *The BRN should renegotiate, if necessary, any agreements that it may have with approved nursing programs in order to provide this important information to students regarding program quality on its website.*

⁵³ This individual is not assigned nursing programs.

⁵⁴ Email from the Assistant Executive Officer, February 23, 2015.

⁵⁵ Email from the Assistant Executive Officer, March 3, 2015.

⁵⁶ Board of Registered Nursing 2014-2017 Strategic Plan, Goal 7: Outreach, p. 17.

ISSUE #13. (POSTING “WARNING” STATUS OF SCHOOLS) The BRN does not currently post on its website a “warning” status of a school which indicates the school has serious problems and may be subject to closure.

Background: When an approved nursing program is unable to correct area of noncompliance or demonstrates a lack of progress, the program is placed on “warning” status. According to BRN, being placed on warning status is a rare and serious action that alerts the program of the Board’s intent to close it down.

BRN requires a program placed on warning status to notify all existing students immediately and to inform all prospective students for the duration that this status is in effect.⁵⁷ The Board may also direct the program to suspend admissions and place other requirements deemed necessary for public protection.

The Board does not, however, alert prospective students to a program’s warning status on its website where approved schools are listed. This information is public -- BRN asserts that individuals can find the determination through its meeting minutes, if one knew the date during which the Board was considering such an action, and that the action was being considered at all. The 2011 Sunset Review Report advised the Board to place this status on its website as part of information about a nursing program. BRN has not done so, but states that it intends to discuss this matter at its April 2015 meeting and, if the Board approves, it will be posted on the internet.⁵⁸

Staff Recommendation: *The BRN should immediately post warning statuses of any schools on its website.*

CONTINUING COMPETENCY

ISSUE #14: (OVERSIGHT OF CONTINUING EDUCATION FOR LICENSEES) The BRN has not provided appropriate oversight of its continuing education program despite admonition to do so in the previous review.

Background: All licensees are required by statute to complete 30 hours of continuing education (CE) during each two year renewal cycle to ensure continued competence. Licensees are required to submit proof of their compliance by signing a statement under penalty of perjury and agreeing to produce documentation upon request. The BRN relies on adherence to CE standards as the primary method of assuring the continued competence of its licensees, but it has not institutionalized regular audits of licensees’ CEs or CE providers (CEPs) since 2002. This issue was raised in the 2011 Sunset Review Report.

Prior to 2002, the BRN conducted random audits of CEs and CEPs, averaging 2,700 RN CEs and 282 CEPs per year. The BRN completed only 200 RN CE audits from 2011 to 2014 and no CEP audits since 2001, citing lack of staff.⁵⁹ This is particularly concerning because the BRN acknowledges that CE compliance is “essential to ensure public safety and protection.”⁶⁰ While BRN reports having made

⁵⁷ It is unclear how the program notifies prospective students.

⁵⁸ Email from the Assistant Executive Officer, March 3, 2015.

⁵⁹ At the time of BRN Sunset report, October 30, 2014.

⁶⁰ BRN Sunset, p. 95.

multiple requests in the past 14 years to obtain additional staffing for audits, it only very recently redirected existing staff towards this work.

A 2009 article titled, “*State-Sponsored Quackery: Feng Shui and Snake Oil for California Nurses*”⁶¹ detailed the BRN’s lax CEP approval process. Reporters uncovered a nursing CEP called ClearSight, which offered credits for a class in “energetic medicine.”

“Energetic medicine” is ClearSight’s name for therapeutic touch, the manipulation of alleged energy fields such as chakras and auras over the body. (The practitioner’s hands make no actual contact with the patient.)

ClearSight introduces you to the skills of Free Will, the art of energy diagnosis, how to make Separations from your Healee so you do not take another person’s energy or disease home and how to release old patterns and stuck energy in your body and auric field. When you use ClearSight healing skills you clear and clean the entire energy field (chakras, channels and aura) and grow and evolve evenly at the rate of growth you are ready to access.

After some prodding to remind the [C]BRN that ClearSight’s provider application was public record, the IIG received a copy of the application and discovered that it was blank in some places and that the instructor’s educational credentials consisted of a BA in comparative religion and a ministerial certificate from the Church of Divine Man, a psychic institute that offers healings, psychic readings, and other such activities.⁶²

ClearSight is no longer an approved CEP, but only because its license lapsed in 2014; no disciplinary actions were ever taken against it.⁶³ This is understandable because, as the article notes, the BRN supported the approval of CEPs that promote education with little to no scientific merit. Refinement of CEP regulations have not since occurred.

Staff Recommendation: *The BRN should review its criteria for CEPs and require content to be science-based and directly related to professionally appropriate practice. The BRN should continue to pursue additional staffing for CE auditors, but should simultaneously rebalance its existing workload and prioritize ongoing CE and CEP audits.*

ENFORCEMENT

ISSUE #15: (UTILIZE INTERIM SUSPENSION ORDERS) The BRN is not adequately utilizing its ability to seek interim suspension orders (ISOs) on its own.

⁶¹ Committee for Skeptical Inquiry, “State-Sponsored Quackery: Feng Shui and Snake Oil for California Nurses” December 2009, available at <http://www.csicop.org/si/show/state-sponsored-quackery-feng-shui-and-snake-oil-for-california-nurses> , accessed March 7, 2015.

⁶² Committee for Skeptical Inquiry (CSI), “State-Sponsored Quackery: Feng Shui and Snake Oil for California Nurses” December 2009.

⁶³ A list of current approved CEPs is not available on BRN’s website, and confirmation of an approved CEP can be found through BreZE’s license lookup process.

Background: The 2011 Sunset Review Report recommended that BRN accelerate the enforcement process in certain circumstances by issuing an Interim Suspension Order (ISO) on its own.⁶⁴

Under existing law, the ISO process provides boards with an avenue for expedited suspension of a license when action must be taken swiftly to protect public health, safety, or welfare. It was recommended that BRN use this method to remove dangerous practitioners from practice in limited circumstances. Four years later, BRN is not using this enforcement tool, stating in its 2014 Sunset Review response that it “needs to research the administrative and legal processes before a determination can be made if and how the BRN can use the authority.”

Staff Recommendation: *The BRN should take full advantage of the ISO process and should discuss with the AG, the Medical Board and other boards which take full advantage of this process so as to prevent dangerous practitioners from continuing to practice if there has been serious harm to patients.*

ISSUE #16: (NEED TO UPDATE DISCIPLINARY GUIDELINES.) The BRN reviews and non-concurs on a large number of ALJ decisions and has not updated its Disciplinary Guidelines to provide better direction to ALJs.

Background: ALJs rely on the Disciplinary Guidelines adopted by BRN when issuing disciplinary orders for violations of the Nursing Practice Act, but these guidelines have not been substantially updated in 13 years.⁶⁵ As a result, practitioners note a wide variety in case outcomes. One attorney practicing before BRN braced a client for a license revocation following a medication overdose resulting in the death of a toddler, and BRN recommended probation.⁶⁶

BRN reports that it has made several attempts to update over the years, but have not been successful “for a variety of reasons.”⁶⁷ It asserts that it is currently reviewing the Guidelines and plans to have a public hearing on them in fall 2015.

Staff Recommendation: *The BRN should complete a review the Disciplinary Guidelines and submit the revision to OAL by the end of 2015.*

ISSUE #17: (RECORDS ACQUISITION) The BRN continues to have problems with obtaining necessary documents and records in pursuing disciplinary action.

Background: The BRN reports that it continues to have problems obtaining certain documents and records, including receipt of consents to release medical records, court records, and arrest documents, in a timely and cost effective manner.

⁶⁴ 2011 Sunset Review Report, p. 30.

⁶⁵ 16 CCR § 1444.5 was updated on July 23, 2014 in response to the previous Sunset Review recommendation to revoke a license if a licensee was found to have engaged in sexual misconduct with a patient or was convicted of a sex offense.

⁶⁶ Communications with private practice attorney, March 5, 2015.

⁶⁷ Email from the Assistant Executive Officer, February 23, 2015. BRN reports that its last attempt was in 2011, but the Board’s sunset and subsequent lack of a quorum stymied this effort. It is unclear why there were no further attempts.

The BRN does not currently have jurisdiction or authority to issue citations to health care facilities who generally keep the records. To remedy this, the BRN is requesting to be included in an existing law that would allow the BRN Special Investigators to exercise the powers of arrest and to serve warrants as would a peace officer. This would give greater authority to the BRN to obtain information in investigations without incurring the pension liability of employing actual peace officers.⁶⁸ This change requires legislation.

A further complication in completing enforcement actions on time is receiving files from the various county superior courts. Many have also begun charging fees to produce records. The BRN states that it has communicated many times with the courts, but has yet to institutionalize a data sharing relationship. When it was suggested that the BRN pass the court fees to a licensee as part of cost recovery, it replied that it is “uncertain whether the BRN would be able to recoup this cost.”

Staff Recommendation: *The BRN should discuss with the DCA the need for its Special Investigators to receive enhanced authority to exercise powers of arrest and service warrants and subpoena records and whether such statutory authority is necessary, and to look into ways of recovering fees for production of court records.*

ISSUE #18: (INTERAGENCY DATA SHARING AGREEMENTS) It does not appear as if the BRN receives information regarding its licensees from other state agencies, especially if there may be issues of misconduct or violations of law, or makes a concerted effort to ensure it receives such information.

Background: The BRN relies on other allied health boards within DCA and the Department of Social Services, the Department of Managed Health Care, and the Department of Public Health, to report information on its licensees. Although certain circumstances mandate automatic reporting, there are no broad mandates for state agencies to report concerns about licensee conduct to BRN.⁶⁹

BRN notes that it has unsuccessfully attempted in the past to be added to various mandatory reporting code sections, and now relies on “informal unwritten understandings to share complaints.”⁷⁰ Upon suggestion, BRN indicates that it is willing to pursue Memorandums of Understanding (MOUs) with these agencies to share information.

Staff Recommendation: *BRN should finalize MOUs with relevant partner agencies to share data by the end of 2015.*

ISSUE #19: (POSTING OF DISCIPLINARY INFORMATION) The BRN states that its historical information regarding disciplinary actions is not comprehensive and in some instances has not been updated.

Background: The BRN provides information on its website regarding disciplinary actions taken against RN licensees since 2005. While all current disciplinary actions are added to the website as they occur, the BRN states that historical information is not comprehensive due to limited staff

⁶⁸ California Penal Code Section 830.11.

⁶⁹ Welfare & Institutions Code Section 15620 requires nursing homes participating in Medicare/Medi-Cal programs to report resident abuse and neglect to BRN; BPC § 801 requires reporting settlement or arbitration awards in excess of \$3,000 related to death or personal injury due to an RN’s negligence, error, or omission to BRN.

⁷⁰ Email from the Assistant Executive Officer, February 23, 2015.

resources and the ability to access records. The BRN posts previous documents online as they are requested by members of the public, and estimates that there remain “a few thousand” to post.

BRN states that they intend to generate a list of licensees who have a revoked or surrendered license prior to 2005 and obtain files in monthly to quarterly time increments for website posting.⁷¹

Staff Recommendation: *The BRN should establish a timeline for posting historical information related to revoked or surrendered licenses prior to 2005.*

SUBSTANCE ABUSE, DIVERSION AND PROBATION PROGRAM

ISSUE #20. (UNIFORM SUBSTANCE ABUSE STANDARDS) The BRN has failed to adopt the Uniform Standards Regarding Substance-Abusing Healing Arts Licensees.

Background: The BRN’s 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. BRN provides a comprehensive program that requires evaluation, treatment, close monitoring, and support towards recovery for licensees. The BRN relies on a contractor, MAXIMUS, to provide the administration and treatment.

Participants join the Diversion Program either by self- or BRN referral. Since 1985, there have been 4,857 RN participants and 1,893 graduates – a 39% success rate. BRN asserts that this figure, though appearing low, saves substantial costs in staff time, investigations, and AG and OAH charges. BRN estimates that it costs 1/3 less to send a licensee through its Diversion program than through the enforcement process.

Although BRN reports an unbelievably low relapse rate for participants (less than 10%),⁷² the success and effectiveness of its program has been called into question through newspaper articles⁷³ and internal reviews. A 2010 DCA audit of MAXIMUS revealed that it failed to keep required documentation of patient treatment, aftercare, and monitoring services, and used inexact standards for drug testing, potentially causing false positive and negative results.⁷⁴

In an attempt to provide uniform operation standards for all healing arts boards’ Diversion and Probation programs, DCA was mandated to develop Uniform Standards Regarding Substance-Abusing Healing Arts Licensees (Uniform Standards) in 2008.⁷⁵ It was intended for the boards to adopt and implement them in their entirety.

⁷¹ Email from the Assistant Executive Officer, March 3, 2015.

⁷² BRN reports that its relapse rate was 6.7% for FY 2012/13 and 8.8% for FY 2013/14. BRN relies only on self-reporting for these figures, however. The National Institute of Health suggests that typical relapse rates are 40-60%. <http://www.drugabuse.gov/publications/addiction-science/relapse/relapse-rates-drug-addiction-are-similar-to-those-other-well-characterized-chronic-ill>.

⁷³ Charles Ornstein, Tracy Weber & Maloy Moore, *When Caregivers Harm: Problem Nurses Stay on the Job as Patients Suffer*; Jessica Garrison, *State’s rehab program for nurses is called ‘untenable’ and ‘dangerous,’* The Los Angeles Times, March 15, 2011.

⁷⁴ Department of Consumer Affairs, Internal Audit Office, “Contract Compliance and Performance Audit of the Department of Consumer Affairs’ contract with Maximus, Inc. for the Health Professionals Diversion Program,” Audit No. 2009-101, June 2010.

⁷⁵ SB 1441 (Ridley-Thomas) Chapter 548, Statutes of 2008.

To date, BRN has still not completed this task. Six years later it reports that it is still “reviewing and considering” them. There was an attempt to incorporate them by regulation in March of 2011, but the BRN blames disruption by the Board’s sunset later that year for its failure. Another attempt was made in March 2014 with a comparison of the Uniform Standards and the existing disciplinary guidelines and Diversion program contract, also to no resolution.

The BRN is concerned that the Uniform Standards may be “cost prohibitive,” but have yet to produce a fiscal analysis justifying their fear. The BRN also is concerned that adopting the Standards in their entirety may override more restrictive existing disciplinary guidelines, but the Board has yet to contact the Legislature with concerns about specific provisions.

Responding to repeated requests about their failure to progress on this topic, the BRN stated that they plan to include information on the Uniform Standards in a 2015 regulation package.⁷⁶ It should be noted that all other boards which have Diversion Programs have adopted these Uniform Standards.

Staff Recommendation: *The BRN should adopt the Uniform Standards by the end of 2015, and if the Uniform Standards are not immediately adopted then consideration should be given to eliminating the Diversion Program as was done by the Medical Board in 2008.*

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

ISSUE #21. (CONSUMER SATISFACTION WITH THE BRN IS STILL LOW.) During the prior review of the BRN in 2011, the BPED Committee indicated that the BRN should take steps necessary to improve its overall service provided to consumers. It is unclear which steps have been taken by the BRN to deal with the dissatisfaction expressed by consumers about the services they receive from the Board.

Background: The DCA conducts a Consumer Satisfaction Survey to gauge individuals’ response to Board’s services. Unfortunately, the response rate has been too low in the past four years to accurately measure BRN’s performance (the average was 21 responses). Of those received, the majority indicated that they were dissatisfied with the Board’s enforcement process and the result of their complaint. The BRN reports that DCA has recently revised the surveys to increase the return rate.⁷⁷

The BRN also receives feedback through a “complaints” tab on its website, which redirects to a main page at DCA. When a consumer submits this form, an email is generated and sent to the Department’s Consumer Information Center. Generally, these emails are forwarded to the Board for response. In certain circumstances the Department will handle the complaint.

This method of generating feedback resulted in far greater response: DCA received the following number of complaints about BRN:

FY 10/11 – 566

⁷⁶ Email from the Assistant Executive Officer, March 3, 2015.

⁷⁷ Email from the Assistant Executive Officer, February 23, 2015.

FY 11/12 – 233
FY 12/13 – 360
FY 13/14 – 554
FY 14/15 to date - 335⁷⁸

The BRN states that the majority of these complaints involve status checks for license applications, and many expressed dissatisfaction with the result of its enforcement process. The BRN reports that its staff review and respond to each complaint.

The figures indicate that complaints rose significantly during the implementation of BreEZe. Although the Board initially posted on its website that they were experiencing delays due to errors in BreEZe, this posting was removed as directed by DCA executive staff.⁷⁹ During this time, applicants and licensees were not able to reach the Board via telephone due to heavy volume and individuals began showing up at the office at the rate of 50-90 per day.⁸⁰ The Board's website discouraged individuals from contacting the Board until 90 days after their checks were cashed, and complaints began reaching the Legislature, prompting the Auditor's review. The Board eventually posted some information on its website to help potential complainants avoid calling in, but results from its 2013/14 Website Satisfaction Survey indicate that only 30% of visitors could find what they were looking for. The BRN convened a staff workgroup to review its website in 2011 and it plans to reconvene in early 2015.

The BRN reports that its call center still receives over 2,000 calls per day, of which only 25% can be answered. Those who are permitted to hold often remain for over 60 minutes.⁸¹ The BRN reports that it engages with staff weekly to provide updated customer service suggestions, training information, and standardized scripts, but this appears to be insufficient to the demand.

Staff Recommendation: *The BRN should explain to the Committees why it believes consumer satisfaction regarding the service of the BRN is still low and what other efforts the BRN could take to improve its general service to the consumer. The BRN should also consult with an outside vendor to determine ways in which it can improve its website.*

**ISSUE #22. (CONTINUED REGULATION OF THE PROFESSION BY THE BRN?)
Should the licensing and regulation of the nursing profession be continued and be regulated by the current board membership?**

Background: The BRN demonstrates lack of controls over its most basic administrative duties and resists suggestions to improve its performance. Though it maintains that staffing shortfalls and funding deficiencies are the cause of most of its performance deficits, the BRN does not maintain accurate data regarding its workload or budget opportunities and has been criticized by oversight agencies for not pursuing necessary changes.

⁷⁸ Email from DCA, February 26, 2015.

⁷⁹ Email from Board staff, March 7, 2015 and email from BRN, March 17, 2015.

⁸⁰ Email from Board staff, March 7, 2015.

⁸¹ BRN Sunset, p. 189.

Staff Recommendation: *Recommend that the BRN's sunset date not be extended at this time and not until the Committees are confident that the issues and recommendations indicated in this Paper will be addressed by the BRN. The Board should closely review and give careful consideration to the management and direction which this Board is receiving and its future responsibilities in protecting the consumers and patients of this state.*