

SUBJECT: Continuing regulation of nurses by renamed Texas Board of Nursing

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Delisi, Laubenberg, Jackson, Cohen, Coleman, Gonzales,
S. King, Olivo, Truitt

0 nays

WITNESSES: For —Elizabeth Sjoberg, Texas Hospital Association; James H. Willmann,
Texas Nurses Association; (*Registered, but did not testify*: Liza Christian,
Texas Association of Nurse Anesthetists; Mazie M. Jamison, Children’s
Medical Center Dallas; Michele O’Brien, Christus Santa Rosa Healthcare)

Against —None

On —Katherine A. Thomas, Board of Nurse Examiners; Joe Walraven,
Sunset Advisory Commission; (*Registered, but did not testify*: James
Johnston, Mark Majek, Mary Beth Thomas, Texas Board of Nurse
Examiners)

BACKGROUND: The Texas Board of Nurse Examiners (BNE) oversees the licensing and
practice of the field of nursing in Texas. The BNE’s main functions
include:

- licensing individuals to practice professional and vocational nursing;
- authorizing professional nurses to practice as advanced practical nurses who may sign a prescription drug order;
- establishing standards for approving nursing education programs ;
and
- enforcing the Nursing Practice Act and board rules.

The BNE has three standing subcommittees:

- Eligibility and Disciplinary Committee, which determines applicant’s eligibility for licensure and makes decisions regarding disciplinary action;
- Education Liaison Committee, which advises the BNE on issues related to nursing education; and

- Advanced Practice Liaison Committee, which advises the BNE on issues related to advanced practitioner waivers.

The BNE regulates 264,450 licensees, including 186,192 professional nurses and 78,258 vocational nurses. The BNE has approved 213 nursing education programs in Texas — 90 for professional nurses, 117 for vocational nurses, and six for advanced practice nurses. The BNE operated with a budget of \$4.8 million in fiscal 2005, with a staff of 79. The board recovers all costs from licensing fees collected from the profession.

HB 1483 by Allen, enacted by the 78th Legislature in 2003, abolished the Board of Vocational Nurse Examiners, which regulated licensed vocational nurses, and merged this function into the BNE. The bill created a single agency responsible for regulating all nurses in Texas. It also reconstituted the BNE board to create a new board consisting of 13 members comprising one advanced practical nurse; two RNs; three LVNs; three nurse faculty of an associate degree RN program, a bachelor's degree RN program, and a higher education LVN program respectively; and four public members. All members are appointed by the governor and serve six-year terms.

The BNE last underwent Sunset review in 1993 and was continued by the 73rd Legislature. As part of HB 1483, the BNE received a delayed Sunset review to occur during the 80th Legislature, rather than a review during the 79th Legislature, which would have been the BNE's usual Sunset review period. If not continued by the 80th Legislature, the BNE will be abolished September 1, 2007.

DIGEST:

CSHB 2426 would continue the BNE until September 1, 2017. The bill would change the name of the BNE to the Texas Board of Nursing (TBN).

Approval and accreditation of nursing education programs. CSHB 2426 would limit the TBN to approving only nursing education programs that lead to initial licensure as a professional or vocational nurse. On or after December 31, 2014, hospital-based diploma programs would have to include a component that enabled their graduates to earn a degree from a degree granting institution. The bill also would require the board to streamline its initial approval process of nursing education programs to eliminate duplication and overlap of tasks between the board, the Texas Higher Education Coordinating Board (THECB), and the Texas Workforce Commission, which would establish consistent guidelines that

would dictate initial program approval. The bill also would prohibit the board from requiring that nursing schools be accredited as a higher education institution and would instead rely upon THECB's requirements for accreditation of these institutions.

CSHB 2426 would stipulate that any nursing program that maintained accreditation through a nursing accreditation agency recognized by the U.S. Department of Education would be exempt from the board's ongoing program approval. This exemption would be contingent upon the board finding that the program had acceptable standards and the program's pass rate on the National Council Licensure Examination (NCLEX) remained above the board-established standard. The bill also would stipulate that the board could accept nursing education programs that were approved by another state board of nursing. The bill would stipulate that the board should approve nursing education programs for longer than a year and that it should discontinue its policy of requesting letters of support for approval of new nursing programs. The board also would be required to establish a plan for creative nursing education models and encourage plans to decrease the nursing shortage.

Board use of criminal history and arrest information. CSHB 2426 would require the board to adopt rules to specify which criminal acts, under Occupations Code, ch. 53, would impair an individual's ability to practice nursing. The board also would be required to specify how information about an applicant's criminal history could be used to determine eligibility for licensure or for disciplinary action.

CSHB 2426 would require the board to inform people required to report an impaired nurse that they would have to notify the board if they suspected that a nurse also committed a practice violation. The board also would be required to adopt rules that clearly outlined its peer assistance program.

Process for use of advisory committees. The bill would require the board's advisory committees to provide independent, external expertise on board functions and policies. It also would stipulate that the advisory committees not be involved in policy setting and could not include board members. In order to limit bias and influence, board members could serve as liaisons to advisory committees, but could not serve on the committees themselves. The bill would establish a process to ensure that the board

consistently and continuously evaluated complaints of impairment and whether these cases constituted professional violations.

Adoption of the APRN multistate compact. CSHB 2426 would adopt the Advanced Practice Registered Nurse (APRN) compact, which would allow qualified advanced practice nurses (APNs) from other member states to practice in Texas without having to go through the board's authorization process.

Board oversight of continuing education. CSHB 2426 would mandate that the board establish guidelines for continuing education that were targeted to specific nursing fields.

Alter licensing and regulatory functions to reflect common practices. The bill would require applicants to pass a jurisprudence exam as a condition of licensure. The board would be required to adopt clear procedures governing the testing process, establish a policy of nonrefundable examination fees, remove the requirement that applications for licensure be notarized, increase the board's administrative penalty authority, and change the board's late renewal penalties.

The bill also would add standard Sunset provisions requiring the TBN to make effective use of technology in service delivery and requiring the board to develop a policy that encouraged the use of negotiated rulemaking and alternative dispute resolution. It also would employ standard Sunset language governing public membership on the agency's policymaking body, conflicts of interest, grounds for removal of member of the policymaking body, training for members of the policymaking body, and maintenance of information on complaints.

Rules and effective date.

The board would have to adopt the policies and rules required by the bill by January 1, 2008. The board also would have to develop the jurisprudence exam and implement the plan for creating innovative nursing education models by September 1, 2008.

The bill would take effect September 1, 2007.

SUPPORTERS
SAY:

In continuing the Texas Nursing Board — the renamed Board of Nurse Examiners — until 2017, CSHB 2426 would change various board practices and functions to improve the training, licensure, and retention of qualified nurses in Texas.

Approval and accreditation of nursing education programs.

The elimination of ongoing oversight for approved, reliably credentialed nursing programs would reduce some of the duplication in program approval that occurs between the TBN, the Texas Workforce Commission, and the Texas Higher Education Coordination Board. The board's ongoing oversight has led it inappropriately to adopt requirements that surpass its responsibility to ensure minimum competency on some occasions. Past board meetings have focused too much on approval of nursing education programs and too little on licensing and enforcement of the profession.

Assuring quality standards for nursing programs would not be an issue because the exemption of programs from ongoing monitoring under CSHB 2426 would apply only to programs that had been credentialed by an organization recognized by the U.S. Department of Education. TBN still would determine whether these programs had acceptable standards before approving them. In addition, CSHB 2426 would not change the current requirement that new nursing programs receive initial board approval.

CSHB 2426 would allow the TBN to approve nursing education programs by other state boards of nursing, which would allow Texas nursing students enrolled in an out-of-state or online program to complete clinicals in Texas without being considered by the board to be practicing nursing without a license. Further, the bill would put these types of programs on notice regarding the regulations and standards that applied to out-of-state or online programs. This provision also would further efforts to decrease the nursing shortage in Texas.

Board use of criminal history and arrest information. CSHB 2426 would allow the board to determine which crimes most directly and consistently relate to the practice of nursing and to what extent these crimes impact the ability to practice. It also would allow the board to determine what would be the appropriate responses to these crimes. The BNE has inconsistently and inappropriately used arrest information. Simply defining all crimes related to the practice is not the norm among

health licensing agencies and does not meet the board's responsibilities to oversee and safeguard the practice of nursing.

CSHB 2426 would ensure that the board was aware of practice violations that occurred because of a nurse's mental or chemical impairment. In cases of impairment, the nurse would have violated the Nursing Practice Act, and the board would have jurisdiction to decide how to discipline the nurse. Further, the bill would allow the board to establish guidelines and procedures to consistently and effectively determine whether a nurse should continue to practice. This would promote a fairer and more consistent process for dealing with impairment and would foster communication between the board and the peer assistance program. Furthermore, this would not require the board to issue a sanction, but would allow the board to have discretion over the situation.

Adoption of the APRN multistate compact. Adoption of the APRN compact would encourage mobility of nurses within the profession. Increasing the ease with which nurses could move and practice would help decrease the state's nursing shortage. Further, adoption of the compact would not expand the scope of practice for any APNs, nor would it abdicate any authority Texas has over these nurses. Additionally, any APN practicing under an APRN Compact license who established residency would be required to obtain APN authorization in Texas. Adoption of the APRN compact also would promote administrative efficiencies.

Alter licensing and regulatory functions to reflect common practices. CSHB 2426 would ensure that licensees were familiar with the laws and rules under which they practiced. The board currently does not test in this area, but this is an unusual practice among health licensing agencies in Texas. In addition, the recent merger of the Board of Vocational Nurse Examiners into TBN necessitates the testing of licensees to ensure that they are aware of their respective legal and practice duties.

OPPONENTS
SAY:

Approval and accreditation of nursing education programs. By exempting nursing programs from ongoing program approval, CSHB 2426 would eliminate ongoing monitoring and consultation regarding consistent standards that promote quality nursing education programs and safe licensees. While accepting the standards of other nursing accreditation agencies is acceptable, some standards are unique to TBN. The board should be able to continue to maintain oversight of these programs. A low NCLEX pass rate is only one reflection of the quality of a program and is

not the only indication of its effectiveness. Additionally, waiting for a program's pass rates to fall below standard would delay intervention in a program and implementation of corrections.

CSHB 2426 would lead to vague and indeterminate regulation of online programs operating in Texas. These programs would have neither regulation from the nursing board of the home state, nor regulations from the TBN. If such a program were allowed to operate in Texas without TBN approval, it could pose safety and health concerns for citizens of Texas by conducting clinical and educational experiences with students without oversight. Programs such as these should be reviewed by TBN to ensure that Texas' standards were met.

Board use of criminal history and arrest information. This provision is unnecessary because the TBN already has policies that relate to crimes and the practice of nursing. Arrest alone is not grounds for discipline or proof of a violation, and arrest information *per se* should not be used to take any disciplinary action. Further, CSHB 2426 could lead to the unintended consequence of barring the board from acting against licensees or applicants when their conduct had not expressly been prohibited.

CSHB 2426 should amend the statutory requirement regarding impairment to require that all third-party referrals involving practice errors be reported. Otherwise, all other incidents involving impairment that did not involve practice errors should be left to the board's discretion regarding disciplinary action. Additionally, the board should not oversee the nurse peer assistance program because it might make nurses decline to seek help over concerns about possible professional repercussions.

OTHER
OPPONENTS
SAY:

Adoption of the APRN multistate compact. In adopting the APRN compact, the TBN should specify that nurses practicing in Texas under the compact have the same rights and privileges as Texas-licensed nurses and that the governor has the authority to withdraw Texas from the compact. CSHB 2426 also should mandate that the board honor the credentials of a licensed nurse from another state and recognize military training as acceptable for licensure in Texas as long as the person had a license in good standing from another state and had passed the NCLEX. The TBN also should set a Sunset date for the compact.

Alter licensing and regulatory functions to reflect common practices. CSHB 2426 should allow for testing of knowledge of concepts relating to

patient safety and human error on the jurisprudence examination. It also should designate the TBN as the appropriate state agency to regulate assistive nursing personnel if those personnel were licensed or certified by the state.

NOTES:

The committee substitute differs from the bill as introduced in that it would:

- change the name of the board from the Board of Nurse Examiners to the Texas Board of Nursing;
- specify that a diploma program completed on or after December 31, 2014, would entitle a student to receive a degree;
- specify the board's authority to deny or withdraw approval from a nursing school for failure to meet board-approved standards;
- specify that accredited nursing schools that maintained an acceptable pass rate would be exempt from board rules for ongoing approval;
- prohibit the board from requiring nursing schools to be accredited as a higher education institutions, rather having the THECB issue requirements for accreditation; and
- remove language from the original bill that would have prohibited members from receiving reimbursement for travel expenses.

The companion bill, SB 907 by Deuell, has been referred to the Senate Government Organization Committee.