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An Audit Report on the Compliance and Effectiveness of the Texas Board of Nursing Facility Administrators

March 1997

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Key Points of Report

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Overall Conclusion

The Texas Board of Nursing Facility Administrators (Board) has not been effective in the receipt and resolution of complaints. Additionally, the Department of Health (Department) has not provided adequate support to the Board for that function. Yet, the licensing of nursing facility administrators appears to be effective and efficient.

Key Facts and Findings

- Board members and Department management must work cooperatively together to effectively regulate nursing facility administrators, jointly focusing on the recommendations in this report. Additionally, the Department of Health should review the issues and recommendations within this report as they apply to its responsibilities over 14 other licensing programs.
- The Legislature should review current statute related to the composition of the Board relative to federal regulations governing the state Medicaid plan.
- The Board should continue to take prompt action to fulfill its statutory responsibility to adopt complete and adequate rules. While the Board has taken recent action to address some statutory requirements, it has not addressed all of them.
- Operating procedures should be consistently followed by Department staff according to existing rules and statute. Board members and Department management should receive summarized status reports of program operations on a regular basis with complete and accurate information. Appropriate performance measures should be developed to evaluate the effectiveness and efficiency of operations.
- The Board and Department management should establish a formal process to identify needs and request resources on a regular basis. The Board should establish a sound process to establish license fees that identifies costs related to specific operations, forecasts service demand, and considers other factors such as quality of service and efficiency of operations.

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Office of the State Auditor

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This audit was conducted in accordance with Government Code, Section 321.0133.

Executive Summary

The Texas Board of Nursing Facility Administrators (Board) has not been effective in the receipt and resolution of complaints. Additionally, the Department of Health (Department) has not provided adequate support to the Board for that function. Yet, the licensing of nursing facility administrators appears to be effective and efficient.

A lack of teamwork between Board members and Department management and staff has contributed to inaction and ineffectiveness. For example, the Board has not imposed any disciplinary actions since 1993 despite hundreds of complaints. Board members said they approved disciplinary actions but Department staff members failed to carry them out. Department staff claimed the Board's rules failed to give them the legal teeth they needed to impose fines or other sanctions. In fact, breakdowns occurred at all levels, as this report reveals.

Board Rules Have Been Incomplete and Inadequate

The Board has not acted in a timely manner to fulfill its statutory responsibility to adopt complete and adequate rules, in spite of advice from the Department and the Office of the Attorney General. After the Board was established on September 1, 1993, the Board used rules adopted in August 1992 by the old Board of Licensure for Nursing Home Administrators until a new set of rules was adopted in September 1995. However, the new set of rules was not comprehensive and did not address several statutory requirements for complaint resolution and sanctions.

In October 1996, the Board adopted a new code of ethics and procedures for the assessment of monetary penalties after critical news articles were published. While this

action addresses some statutory requirements, it does not address all of them.

The lack of timely action could be partially due to Board members not fully understanding their duties and responsibilities and/or the change in the Department's legal counsel. Without adequate rules, neither the Board nor Department staff have been able to effectively carry out their duties and responsibilities.

Complaint Operating Procedures Are Not Effective or Efficient

Operating procedures are not consistently followed according to existing rules and statute. A review of 42 complaint files showed that files are not complete or well-organized. Additionally, files have been inadequately prepared for litigation/hearing. No hearing has been conducted on any case since the Board was established within the Department.

Complaint tracking systems are not efficient or effective, and inconsistencies were noted between the physical files and the automated tracking systems. Several systems must be accessed and reviewed to determine the status of an individual licensee.

Performance Management Has Been Inadequate

The Board and Department management do not receive adequate information to properly oversee activities and evaluate performance. Furthermore, they do not use comprehensive performance measures to evaluate program effectiveness and efficiency. Without meaningful and valid performance information, it is difficult to ensure that quality services are produced and made available at a reasonable cost.

Executive Summary

A compilation of several relevant performance indicators by the State Auditor's Office and comparison to other similar licensing boards indicate that the Board has not been effective.

Planning and Budgeting Have Been Inadequate

A formal process is not in place at the Board or Department management level to identify needs and request resources. Management of the Professional Licensing and Certification Division (Division) does not conduct routine analysis of workload and staffing needs. While Board members, management, staff, and outsiders have referred to inadequate staffing for the nursing facility administrator program, management has not systematically or objectively supported that premise. Rudimentary analysis conducted by the State Auditor's Office suggested that staffing inequities may exist within the Division.

A Process Is Not in Place to Establish License Fees

The Board proposed in August 1996 to cut the license renewal fee from \$250 to \$125. However, the proposal was not based on a sound process that considered identification of costs specifically related to the renewal process, number of renewals, or other relevant factors. The Board's proposal was based solely on a review of its total revenue and expenditures for all operations. Since fees are deposited to the General Revenue fund, the Board's approach was to collect only that amount necessary to support the operating budget. While this is consistent with statutory language which states that the Board shall set reasonable and necessary fees in amounts necessary to cover the cost of administering the enabling statute, the proposal to reduce the renewal fee (versus other fees) was not soundly constructed.

Summary of the Board's and Management's Response

The Board and Department management agree that improvements can be made in rulemaking and complaint management. Improvements have been made and are continuing. Additionally, sufficient program performance measures will be provided as the new software system is fully implemented. With respect to planning and budgeting, the department believes that there is a formal process in place whereby Department managers work with the respective boards on budget issues. In regard to fee setting, the Board will consider using an analysis of the various costs and fees rather than total revenue and costs.

Neither the Board nor the Department agree that there has been any lack of teamwork between Board members and Department management and staff in the resolution of complaints.

Summary of Objective and Scope

The objective of this audit was to evaluate the Board's effectiveness and its compliance with statutory duties and responsibilities. The scope of this audit included the duties and responsibilities of the Board and the Department of Health. Staff support is provided within the Department's Professional Licensing and Certification Division.

The scope of this audit included a review of the processes by which the Board and the Division establish plans and budgets; identify and control the use of human, financial, and other resources; and report and evaluate the results of their performance.

Organizational Placement Has Affected the Board's Effectiveness

The governance structure, as established by legislation effective September 1, 1993, requires a cooperative approach to regulation of nursing facility administrators. The Board, which is appointed by the Governor, adopts rules for the licensing and regulation of nursing facility administrators. However, the Board is established within the Department of Health (Department). The Commissioner of Health designates a Department employee to serve as Executive Secretary of the Board. The Department provides the personnel and necessary facilities required to administer statutory responsibilities. The Department does this through the Professional Licensing and Certification Division (Division), which also provides support for 14 other licensing programs. While the scope of this audit did not include a review of the effectiveness of other licensing programs, the issues raised in this report are relevant to all of them.

Section 1-A:

Teamwork Is Lacking Between the Board and the Department of Health

A lack of teamwork between Board members and Department management and staff has contributed to inaction and ineffectiveness. For example, the Board has not imposed any disciplinary actions since 1993 despite hundreds of complaints. Board members said they approved disciplinary actions but that Department staff members failed to carry them out. Department staff claimed the Board's rules failed to give them the legal teeth they needed to impose fines or other sanctions. In fact, breakdowns occurred at all levels, as this report reveals.

Section 1-B:

Interaction Between the Department of Health and the Department of Human Services Can Be Improved

The existing governance structure requires a cooperative effort between the Department and the Department of Human Services since the Department of Human Services is responsible for the regulation of nursing homes. The majority of complaint referrals received by the Board come from the Department of Human Services because federal legislation requires that an administrator be referred to the Board when the Department of Human Services finds substandard quality of care at a nursing facility. A formal agreement has not been in place between the two agencies. A recommendation was made in July 1994 to prepare a Memo of Understanding with the Department of Human Services, but no apparent action was taken prior to September 1996. Currently, an effort is underway to develop a Memo of Understanding to guide the actions of each agency.

Section 1-C:

State Statute Is Not in Compliance With Federal Regulations

The composition of the Board dictated by state statute is not in compliance with federal regulations governing the state Medicaid plan. The Texas Board of Nursing Facility Administrators is composed of six nursing facility administrators and three members of the public. According to 42 Code of Federal Regulations, Section 431.706, a majority of the Board members may not be representative of a single profession or category of institution.

Recommendations:

Board members and Department management must work cooperatively together to effectively regulate nursing facility administrators, jointly focusing on the recommendations in this report. Within any governance structure, effective regulation of nursing facility administrators requires effective teamwork between Board members, management, and staff and between agencies. Under the current governance structure, Department management should expedite the development of a Memo of Understanding with the Department of Human Services. Additionally, the Department of Health should review the issues and recommendations within this report as they apply to its responsibilities over other licensing programs.

The Legislature should review current statute relative to federal regulations governing the state Medicaid plan. If the Board is abolished, the Legislature should ensure compliance with federal regulations that require that the state licensing program be implemented by the agency designated under the healing arts act of the state or by a state licensing board.

Management's Responses:

Although the Texas Board of Nursing Facility Administrators (Board) has already taken or initiated actions to address a number of the issues raised in the report, we welcome your views. The investigation and resolution of complaints against nursing facility administrators is a complex and difficult issue that we will continue to address. While we do not agree that a "lack of teamwork" has contributed to the weaknesses in resolving complaints, we do see the need to better define the roles and responsibilities of the Board and the staff.

A draft of the Memorandum of Understanding was delivered to the Department of Human Services for review, comment, and signature on February 10, 1997.

Although the report provides no evidence that the issues discussed apply to other licensing programs, the final audit report will be discussed in the Division's program staff meetings. If any of the issues are found to be applicable to other licensing activities, appropriate actions will be taken.

Board Rules Have Been Incomplete and Inadequate

The Board has not acted in a timely manner to fulfill its statutory responsibility to adopt complete and adequate rules, in spite of advice from the Department and the Office of the Attorney General. After the Board was established on September 1, 1993, the Board used rules adopted in August 1992 by the old Board of Licensure for Nursing Home Administrators until a new set of rules was adopted in September 1995. However, the new set of rules was not comprehensive and did not address several statutory requirements for complaint resolution and sanctions. Specifically, the 1995 rules did not:

- Distinguish between categories of complaints or prescribe guidelines concerning the categories of complaints that require the use of a private investigator and the procedures for the Board to obtain the services of a private investigator.
- Establish a schedule for conducting each phase of a complaint under the control of the Board.
- Define a broad schedule of sanctions for statutory violations. Statute specifies that the designated hearings examiner shall use the schedule for any sanction imposed as the result of a hearing conducted.

In July 1994 the Department's legal counsel reported that the Board should prioritize complaints and coordinate complaints with other relevant state agencies. Additionally, a report from the Office of the Attorney General expressed major concern about the lack of prioritizing complaints and the need for a consistent basis for disciplinary action and/or investigation.

The Board has also not been prompt in adopting a code of ethics for nursing facility administrators. The Executive Secretary informed the Board in March 1994 that a Code of Ethics for administrators would need to be written and approved. The Policy and Procedures Committee recommended a draft code of ethics for review and incorporation in the Board rules 18 months later in September 1995. As of September 1996, there still was not an enforceable code of ethics or standards of practice for nursing facility administrators.

In October 1996 the Board adopted a new code of ethics and procedures for the assessment of monetary penalties after critical news articles were published. While this action addresses some of the aforementioned statutory requirements, it does not address all of them.

The lack of timely action could be partially due to Board members not fully understanding their duties and responsibilities and/or the change in the Department's legal counsel. Without adequate rules, neither the Board nor Department staff have been able to effectively carry out their duties and responsibilities.

Recommendation:

Under any governance structure, complete and adequate rules are necessary. Under the current governance structure, the Board should continue to take prompt action to fulfill its statutory responsibility to adopt complete and adequate rules, including an enforceable code of ethics for nursing facility administrators. Rules should address all statutory requirements. Department legal counsel should be active in this initiative, providing guidance and direction in the consideration and interpretation of statutory requirements.

Management's Response:

The Board has taken steps to develop complete and adequate rules necessary to manage the program by adopting final rules for Standards of Conduct (Code of Ethics) and Administrative Penalties on December 30, 1996. The promulgation of rules, to effectively and efficiently implement the program, is an ongoing process.

In the Fall of 1996, the Board designated a team of the Board members to develop a broad schedule of sanctions to complement the standards of conduct and administrative penalties being promulgated. Although the rules in place already address statutory requirements, the broad schedule of sanctions should enhance the enforceability of the rules.

The Department's legal counsel has actively supported the Board including the promulgation of the most recently adopted rules. Counsel has assisted in expediting the development, review, and delivery of rules for publication in the Texas Register. As noted in the audit report, the Department's legal counsel made significant recommendations to the Board in July 1994.

Section 3:

Complaint Operating Procedures Are Not Effective or Efficient

Operating procedures are not consistently followed by Department staff according to existing rules and statute, which has led to inefficiencies and ineffectiveness.

Section 3-A:

Complaint Files Are Incomplete and Disorganized

A review of 42 complaint files showed that files are not complete or well-organized. Department staff members have not adequately documented steps taken, properly notified complainants, or fully documented dismissals. The files do not have schedules for conducting each phase of a complaint investigation or evidence that licensees were notified at least quarterly of the status of the investigation, both of which are required by statute. In one case, a complaint file could not be located by Department staff. Additionally, during a review by the Department's Internal Audit Division in

September 1996, 6 of 30 complaint files selected for review could not be located by the Department staff.

Files have been inadequately prepared for litigation/hearing. In January 1996, 14 files were returned to Department staff from the Department's Office of General Counsel Litigation Section because they were insufficient to begin the hearing process. These files had been prepared in response to proposed actions by the Board and appealed by the licensee. Some of these appealed cases were closed later without documented reasons. As of December 1996, no hearings have been conducted on these or any other cases. When the 14 files were returned in January 1996, records denote that 3 other files were ready for hearing. Yet, there is no record of any action after March 1996 for one of the cases and no record of any action after June and August 1996 for the other two cases.

Section 3-B:

Complaint Tracking Systems Are Cumbersome and Contain Inaccurate Information

Complaint tracking systems are not efficient or effective, and inconsistencies were noted between the physical files and the automated tracking systems. Several systems must be accessed and reviewed to determine the status of an individual licensee. A separate file is established for each licensee. (A review of 25 licensee files showed them to be properly documented according to Board rules.) A separate file is also established for each complaint. Two separate automated systems are used to record licensee and complaint information. The licensee tracking system does not consistently have a reference to complaints received. The complaints tracking system does not consistently reflect the accurate status of each case, and it does not have complete information.

Prior to the creation of the Board within the Department of Health, one automated tracking system was used to track both licensees and complaints. Short-term plans were to convert that system to a common system used within the Professional Licensing and Certification Division, but no contingency plans were prepared. In the three-plus years since September 1993, the conversion has not occurred. The old automated tracking system has been used for tracking licensees, but it has not been used to track complaints. Some staff members have not been trained to fully use the old system and a separate word processing system is used to track complaints.

Recommendations:

Operating procedures should be consistently followed according to existing rules and statute. Department management and staff should ensure that complaint files are complete and well-organized, according to existing Board rules and statutory requirements. Board members and Department management should conduct proper review and oversight of staff activities on a regular basis. All files to be submitted for litigation/hearing should be fully reviewed by legal counsel before submission.

Management should take prompt action to consolidate licensee and complaint tracking information. If conversion is further delayed, a contingency plan should be developed. Staff should be fully trained to use existing and planned systems.

Management's Responses:

The current procedures for handling complaints are being reviewed and will be revised as necessary to comply with Board rules and the statute.

An additional staff member, employed on February 10, 1997, will be responsible for the complaint management process. The program will be coordinating with the Investigations Section to facilitate the flow of information from the Texas Department of Human Services in accordance with the Memorandum of Understanding. This new employee will also be responsible for ensuring that the complaint files are complete and organized according to the requirements in the rules and statute.

The Board and Division staff will discuss the mechanisms available and implement those needed to provide the proper oversight of this program.

All files have been thoroughly reviewed by counsel before placed on the docket for an administrative hearing.

We agree that some of the staff have not been adequately trained in the current software system. We also agree that maintaining separate licensing and complaint systems could potentially contribute to weaknesses in the complaint process. The licensing database has been converted to a commonly used license tracking system that includes a complaint tracking component. The staff is being fully trained in new system while the two systems run parallel.

Section 4:

Performance Management Has Been Inadequate

The Board and Department management do not receive adequate information to properly oversee activities and evaluate performance. They rely primarily on an annual report to summarize activities. There is no interim summary reporting. When the Board's fiscal year 1995 Annual Report erroneously showed seven sanctions implemented, Board members were unable to confirm or verify the number of sanctions.

Section 4-A:

Performance Measures Are Not Defined

The Board and Department management do not use comprehensive performance measures to evaluate program effectiveness and efficiency. Performance data is primarily limited to workload measures showing the number of licensees, the number of licenses issued, the number of renewals, and the number of complaints received and

resolved. Management also reports the average number of days to resolve complaints on an annual basis. Without meaningful and valid performance information, it is difficult to ensure that quality services are produced and made available at a reasonable cost.

Section 4-B:

One Indicator Shows That the Board Has Not Been Effective

Figure 1

Percentage of Complaints Resulting In Disciplinary Actions Fiscal Year 1996	
Board of Medical Examiners	11.2
Board of Dental Examiners	25.5
Board of Nurse Examiners	23.2
Board of Chiropractic Examiners	24.2
Board of Vocational Nurse Examiners	44.8
Board of Podiatry Examiners	17.9
Optometry Board	3.8
Board of Pharmacy	10.4
Board of Examiners of Psychologists	6.8
Executive Council of Physical Therapy Examiners	7.6
Executive Council of Occupational Therapy Examiners	17.9
Board of Veterinary Medical Examiners	9.9
Board of Nursing Facility Administrators	0.0

Source: As reported by each agency to the Health Professions Council

It appears that the Board has not been diligent in complaint investigation and resolution. The Board has not disciplined any licensee since September 1, 1993, despite hundreds of complaints. As seen in Figure 1, 12 health profession licensing agencies in Texas reported (in fiscal year 1996) a range from 3.8 percent to 44.8 percent of complaints resulting in disciplinary action. In a comparison to another set of licensing programs, 11 of the 14 licensing functions supported by the Department Professional Licensing and Certification Division reported during the same fiscal year at least 8 percent of complaints resulting in disciplinary action. Yet, the Board has the highest ratio of complaints received to the number of licensees among all 26 licensing programs. (See Appendix 4.)

Regulation of nursing facility administrators in Texas may not be any less effective than in other states. According to a 1994 - 1995 publication by the National Association of Boards of Examiners for Nursing Home Administrators, 36 states reported that no licenses had been suspended or revoked as disciplinary measures.

Section 4-C:

Three Efficiency Measures Show Positive Results

A compilation of three relevant performance indicators by the State Auditor's Office and comparison to other similar licensing boards indicate that the Board may have been efficient during fiscal year 1996.

- An estimate of the Board's average cost per individual license issued in fiscal year 1996 is low compared to 11 of the 12 health profession licensing agencies outside of the Department. (One agency did not report this figure.) The estimated average cost per individual license issued for the Board in fiscal year

1996 was approximately \$24. The average cost among the 11 licensing agencies was approximately \$29, with a range from \$1.30 to \$75.50.

Figure 2

Average Cost per Complaint Resolved Fiscal Year 1996	
Board of Medical Examiners	\$1,406.64
Board of Dental Examiners	381.00
Board of Nurse Examiners	407.66
Board of Chiropractic Examiners	316.32
Board of Vocational Nurse Examiners	295.73
Board of Podiatry Examiners	not reported
Optometry Board	227.67
Board of Pharmacy	523.04
Board of Examiners of Psychologists	1,470.45
Executive Council of Physical Therapy Examiners	84.06
Executive Council of Occupational Therapy Examiners	89.15
Board of Veterinary Medical Examiners	769.94
Board of Nursing Facility Administrators	534.81*

Source: Legislative Budget Board ABEST system
* Calculated by the State Auditor's Office

- An estimate of the Board's average cost per complaint resolved in fiscal year 1996 is fairly comparable to 11 of the 12 health profession licensing agencies outside of the Department. (One agency did not report this figure.) The estimated average cost per complaint resolution for the Board was approximately \$535, which is the fourth highest average cost among the 11 licensing agencies. The average cost among the 11 licensing agencies was approximately \$543. (See Figure 2.)
- Prior to fiscal year 1996, it appears that the Board and Department staff were not prompt in handling complaints. A test of 26 closed complaint files showed an average of 292 days from date of receipt to date of closure. A separate test of 19 complaint files that resulted in proposed actions showed that the average time elapsed between receipt of the complaint and the date of the proposed action by the Complaints Committee was approximately 393 days. However, improvement

occurred during fiscal year 1996. A test of 16 closed complaint files showed an average of 165 days from date of receipt to date of closure. (Management reported 158 days based on a sample of 10 complaint files.) The average amount of time among 25 other licensing programs during fiscal year 1996 was 160 days, with a range from 64 to 386 days.

Section 4-D:

Employee Performance Evaluations Are Not Performed in a Timely Manner

The lack of an adequate performance management system is also demonstrated by the lack of timely employee performance evaluations. The most recent evaluation for any administrative staff member, including the former Executive Secretary, was in October 1994. According to management, the former Executive Secretary's performance had been very good. Yet, in September 1996, the former Executive Secretary was removed from his duties in response to the erroneous data reported in the fiscal year 1995 Annual Report, which was detected during an investigation by the *Austin American-Statesman*. It was not based on a formal performance evaluation. Agency policy requires annual evaluations. Employee performance evaluation systems should be tied to rewards and pay, placement and promotion, and training and development. The

system of evaluating employee performance can also assist in human resources planning and job definition, as discussed in Section 5.

Recommendations:

Board members and Department management should receive summarized status reports of program operations on a regular basis, with complete and accurate information. Appropriate performance measures should be developed to evaluate the effectiveness and efficiency of operations; for example, the percentage of complaints resulting in disciplinary action and the average cost per complaint resolved. As measures are defined, benchmarks should be established with consideration toward external organizations and other objective sources.

Management should ensure timely performance evaluations of employees and should use the system to assist in human resource decisions.

Management's Responses:

We believe the new software, when fully implemented, will provide sufficient program performance information for the Board and Department management.

It may be worthwhile to review ratios such as those recommended in this report to track program performance over time. It is, however, difficult to use ratios of this type to compare complaint management systems across a myriad licensing agencies. For example, for the NFA program, survey activities of the Texas Department of Human Services automatically produce complaint referrals to the NFA Board. Some agencies accept anonymous complaints. Moreover, some professions are more prone to complaints than others. The Board and the Department will further study the usefulness of the recommended ratios.

The Division's personnel evaluation process was in compliance with the Department's policies and procedures at the time of the audit. The Department transitioned from its traditional performance evaluation conducted annually to the performance journal process at the close of fiscal year 1995. Division staff provided performance journal training for Division and other associateship staff during August 1995. The performance journal process became effective November 1, 1995. By policy, employee performance journal materials are retained by the employee and/or supervisor and not in a central personnel filing system. The Division Director's files include records showing that the former Executive Secretary was counseled in October 1996, in accordance with performance journal procedures.

Section 5:

Planning and Budgeting Have Been Inadequate

A formal process is not in place at the Board or Department management level to identify needs and request resources. Management of the Professional Licensing and

Certification Division does not conduct routine analysis of workload and staffing needs. Management stated that analysis would be insignificant because of Legislative Budget Board instructions to limit fiscal years 1996 - 1997 budget requests to the sum of fiscal years 1994 - 1995 adjusted appropriations. (However, the instructions provided guidance for certain exceptions.)

Board members, management, staff, and outsiders have referred to inadequate staffing. Board members said they know they need additional staff but that state budget rules prohibit them from using surplus fees to hire employees. In fact, the consolidation of funds at the end of fiscal year 1995 effectively prohibited the direct use of revenue fees for Board expenditures. Fees collected are deposited into the General Revenue Fund.

Staff recognized a shift in workload that affected the adequacy of staffing. For example, the Chief Investigator recognized in early 1995 the need for additional staffing based on an increase in complaints in the nursing facility administrator program. He requested an additional investigator and presented alternative strategies to address the increased workload. However, there has been no increase in staff since January 1995. Only recently, in response to an investigation by the *Austin American-Statesman*, has management addressed additional staff for the nursing facility administrator program through the use of earned federal funds.

The Department has a cap on the total number of employees, but management has not actively considered shifting staff from one licensing function to another. Rudimentary analysis was conducted by the State Auditor's Office of workload within the Professional Licensing and Certification division, defined by the number of new applications, license renewals, and complaints processed during fiscal years 1995 and 1996. This analysis supports the premise that staffing inequities may exist. For example, a review of the complaint volume for fiscal years 1995 and 1996 shows that 38 percent of total complaints originated from the nursing facility administrator program. If the investigative staff of five was allocated proportionately based on each program's complaints, this would translate into two investigators for the nursing facility administrator program. However, 1.25 full-time equivalent employees are currently allocated.

Management has used funds from one licensing program to benefit other programs. For example, an imaging system was procured by the Division in 1995 at a cost of approximately \$200,000 to be used for all 15 licensing programs. Approximately 30 percent of the funds came from the nursing facility administrator program. Adequate procedures were used for its procurement, but a comprehensive implementation plan has not been documented. Stated plans are to implement the imaging system for the nursing facility administrator program during fiscal year 1997.

Recommendation:

The Board and Department management should establish a formal process to identify needs and request resources on a regular basis. Management of the Professional Licensing and Certification Division should conduct routine analysis of workload and

staffing needs within the entire Division and consider shifting staff between licensing functions when warranted. Such a decision would require a dialog with affected boards and consideration of the permanency of such actions. For example, a temporary shift of staff may not be as cost-beneficial as a permanent assignment.

A formal process for the allocation of shared purchases should be documented. A comprehensive implementation plan for the imaging system should be documented and communicated to all Division management and staff.

Management's Response:

An annual, formal process exists in the Health Care Quality and Standards Associateship of TDH to gather information from the divisions and bureaus regarding budgetary issues. As a part of developing the operating budget, programs develop proposed budgets which detail the amount of funds to allocate to each category of expenditure for each program. The program managers are responsible for working with their respective boards to gather input for this process.

Program managers currently shift resources within the activities under their control. Further shifting would require approval of the respective boards.

The Division has formalized the process used to allocate shared purchases.

A comprehensive implementation plan for the optical imaging system has been developed.

Section 6:

A Process Is Not in Place to Establish License Fees

The Board proposed in August 1996 to cut the license renewal fee in half, from \$250 to \$125. However, the proposal was not based on a sound process which considered identification of costs specifically related to the renewal process, number of renewals, or other relevant factors. The Board's proposal was based solely on a review of its total revenue and expenditures for all operations. Since fees are deposited to the General Revenue fund, the Board's approach was to collect only that amount necessary to support the operating budget. While this is consistent with statutory language that states that the Board shall set reasonable and necessary fees in amounts necessary to cover the cost of administering the enabling statute, the proposal to reduce the renewal fee (versus other fees) was not soundly constructed.

A review of nursing facility administrator licensing fees in other states shows that Texas fees are at the high end of the spectrum. In other states, original license fees range from \$20 to \$351 and annualized license renewal fees range from \$15 to \$295. Texas nursing facility administrator fees are \$250 for each.

Recommendation:

The Board should establish a sound process to establish license fees which identifies costs related to specific operations, forecasts service demand, and considers other factors such as quality of service and efficiency of operations. For example, an analysis of renewal fees should focus specifically on the renewal process.

Management's Response:

The audit found the Board's action to be consistent with the statutory language. However, a detailed analysis of costs associated with the issuance of a license and/or renewal will be considered prior to recommending a change in fee structure.

Objective, Scope, and Methodology

Objective

The objective of this audit was to evaluate the Board's effectiveness and its compliance with statutory duties and responsibilities.

Scope

The scope of this audit included the duties and responsibilities of the Board and the Department of Health. Staff support is provided within the Department's Professional Licensing and Certification Division.

The scope of this audit included a review of the processes by which the Board and the Division establish plans and budgets; identify and control the use of human, financial, and information resources; handle complaints; and report and evaluate the results of their performance.

Methodology

Department financial data was analyzed, and relevant reports and documentation were reviewed. Conventional audit procedures were applied to collect information, including interviews with management and staff of the Department, Board members, and other external parties. Audit testing and analysis included control review, trend analysis of expenditures and performance statistics, review of licensee and complaint files, and review of performance measures. Our work will not necessarily reveal all internal control weaknesses.

Information collected included:

- Documentary evidence such as:
 - Texas Public Health Code
 - *Code of Federal Regulations*
 - Various management reports
 - Department documents, memoranda, and publications, including the Department Strategic Plan and 1996 - 1997 Legislative Appropriations Request
 - Policy and procedures manuals
- Interviews with management and staff of the Department
- Interviews with management and staff of the Department of Human Services
- Correspondence from interested citizens and special interest groups
- Interviews with representatives from state boards of examiners for nursing home administrators in California, Ohio, Wisconsin, Maryland, New York, and Tennessee

Procedures and tests conducted:

- Review of documentation relating to Department operations
- Testing of licensee and complaints files
- Testing of travel expenditures and other operating expenditures

Analysis techniques used:

- Control review
- Trend analysis of budgets, expenditures, and performance statistics
- Process flowcharting of Department operations

Criteria used:

- State Auditor's Office Methodology Manual
- Other standard audit criteria established during fieldwork

Fieldwork was conducted from November 1996 to December 1996. The audit was conducted in accordance with applicable professional standards, including:

- Generally Accepted Government Auditing Standards
- Generally Accepted Auditing Standards

There were no instances of noncompliance with these standards.

The audit work was performed by the following members of the State Auditor's Office:

- Jon Nelson, CISA (Project Manager)
- Janet Melton, CPA
- Abderrahim Taji
- Rachel Cohen (Quality Control Reviewer)
- Tom Valentine (Audit Manager)
- Craig Kinton, CPA (Director)

Financial Information

Figure 3

	Fiscal Year 1994	Fiscal Year 1995	Fiscal Year 1996	Fiscal Year 1997 Budget
Revenue	\$461,053	\$304,270	\$428,376	\$368,242
Expenditures	\$102,901	\$395,554	\$236,633	\$357,095

Source: Texas Department of Health

Figure 4

Operating Budget By Object of Expense	Budget 1996	Budget 1997
Salaries + Benefits	\$176,336	\$217,278
Travel	15,369	32,435
Professional Services	28	7,500
Other Operating Expenses	19,170	61,053
Capital	0	0
Indirect Cost	25,730	38,829
Total	\$236,633	\$357,095

Source: Texas Department of Health

Board Profile

The mission of the Texas Board of Nursing Facility Administrators is to license and regulate nursing facility administrators in Texas in order to protect the public and to improve the standards of the profession.

The Board is composed of nine members appointed by the Governor. Three members must be members of the public, and six members must be nursing facility administrators. Additionally, there are two non-voting, ex-officio members from the Texas Department of Human Services and the Texas Department of Aging.

The Commissioner of Health designates an employee of the Texas Department of Health to serve as the Executive Secretary of the Board. The Board is administratively attached to the Department of Health's Professional Licensing and Certification Division.

Reference List

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Texas Health Profession Licensing Agencies

Figure 5

Texas Health Profession Licensing Agencies Fiscal Year 1996 Workload

Agency Name	Number of Licensees	Number of Complaints Received	Ratio of Complaints/ Licensees	Number of Complaints Resolved	Complaints Resulting in Disciplinary Action
Board of Medical Examiners	49,371	3,588	7.27%	1,513	169
Board of Dental Examiners	21,096	542	2.57%	415	106
Board of Nurse Examiners	153,678	1,768	1.15%	1,523	354
Board of Chiropractic Examiners	3,695	241	6.52%	215	52
Board of Vocational Nurse Examiners	72,209	1,290	1.79%	709	318
Board of Podiatry Examiners	753	88	11.69%	78	14
Optometry Board	2,818	163	5.78%	133	5
Board of Pharmacy	23,696	1,842	7.77%	1,487	154
Board of Examiners of Psychologists	4,595	91	1.98%	132	9
Executive Council of Physical Therapy Examiners	9,353	192	2.05%	185	14
Executive Council of Occupational Therapy Examiners	4,787	37	.77%	28	5
Board of Veterinary Medical Examiners	5,593	187	3.34%	161	16
Texas Department of Health:					
Advisory Board of Athletic Trainers	1,123	5	.45%	4	1
Board of Examiners of Dietitians	2,820	7	.25%	7	5
Committee of Examiners in the Fitting & Dispensing of Hearing Instruments	466	26	5.58%	13	0
Board of Examiners of Marriage and Family Therapists	4,310	44	1.02%	26	2
Massage Therapy Registration Program	9,812	71	.72%	63	5
Board of Licensure for Professional Medical Physicists	381	2	.52%	1	2
Medical Radiologic Technologists Certification Program	15,096	18	.12%	14	2
Advisory Council of Opticians' Registry	933	1	.11%	0	0
Board of Examiners of Perfusionists	270	2	.74%	2	2
Board of Examiners of Professional Counselors	10,700	114	1.07%	38	4
Registry for Providers of Health-Related Services	103	0	0.00%	0	0
Respiratory Care Practitioner Advisory Committee	9,478	14	.15%	6	4
Board of Social Worker Examiners	17,571	99	.56%	86	14
Board of Examiners for Speech-Language Pathology and Audiology	8,089	20	.25%	8	2
Board of Nursing Facility Administrators	2,268	305	13.45%	191	0

Source: As reported by each agency to the Health Professions Council