STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

A PERFORMANCE AUDIT
OF THE

BOARD OF NURSING

DECEMBER 1981

A REPORT TO THE
ARIZONA STATE LEGISLATURE

REPORT 81-17

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STATE OF ARIZONA
OFFICE OF THE
AUDITOR GENERAL

December 15, 1981

Members of the Arizona Legislature
The Honorable Bruce Babbitt, Governor
Ms. Shirley Rennicke, Executive Secretary
Board of Nursing

Transmitted herewith is a report of the Auditor General, A Performance Audit of the Board of Nursing. This report is in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. The performance audit was conducted as a part of the Sunset review set forth in A.R.S. §§41-2351 through 41-2379.

The blue pages present a summary of the report; a response from the President of the Board, Ms. Sally Ann Lewis, is found on the yellow pages preceding the appendices.

My staff and I will be pleased to discuss or clarify items in the report.

Respectfully submitted,

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Enclosure

OFFICE OF THE AUDITOR GENERAL

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SUMMARY

The Office of the Auditor General has conducted a performance audit of the State of Arizona, Board of Nursing in response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee. This performance audit was conducted as a part of the Sunset review process set forth in Arizona Revised Statutes (A.R.S.) §§41-2351 through 41-2379.

The stated goal of the Board, established in 1921, is to ensure safe and effective nursing services to the public. To accomplish this goal, a variety of functions are performed including: 1) examination of nursing applicants, 2) initial issuance and annual renewal of licenses, 3) accreditation of nursing schools, 4) certification of nurse practitioners (nurses skilled and trained in specialty areas), 5) receiving and investigating complaints, 6) holding hearings, and 7) disciplining nurses for violations of practice standards.

Our review indicated that Arizona law requires applicants for licensure to pass a written examination. The Board uses a national examination, however, our review of the manner in which the examination is graded revealed that: 1) it is not scored in accordance with Arizona statutory requirements, and 2) 36 percent and 11 percent of the Registered Nurse and Licensed Practical Nurse applicants respectively, would not have passed if the passing score had been equivalent to that required by Arizona law. (page 9)

Our review of the composition of the Board of Nursing revealed that unlike most states, Arizona does not allow full LPN representation on the board responsible for regulating nursing. It appears that the Board's effectiveness would be enhanced if LPNs were added to the Board's membership. (page 15)

Arizona statutes require the Board of Nursing to investigate complaints against nurses, and revoke or suspend licenses for proper cause. We found that the Board has generally been strict when imposing penalties against nurses. However, we also found that: 1) there is an apparent lack of knowledge within the nursing community as to what constitutes incompetency on the part of nurses, and 2) the Board has limited disciplinary options when contrasted with other Arizona health regulatory boards. (page 25)

Finally, a review of schools approved by the Board revealed that the Board should reassess one nursing program to which it granted full accreditation in 1978. (page 39)

Consideration should be given to the following recommendations:

- A.R.S. §§32-1633 and 32-1638 be amended to grant the Board authority to set the passing score on its written examination through its rules and regulations, and the validity of licenses issued prior to such a revision be recognized. (page 14)
- The practical nurse committee be eliminated; (A.R.S. §32-1607), and A.R.S. §32-1602 be amended to add two actively practicing LPNs to the Board. (page 24)
- The Board notify license holders of the Board's responsibilities to investigate and resolve issues involving competency. (page 36)
- The Board amend its rules and regulations to include failure of a licensee to report violations of the Nursing Practice Act as unprofessional conduct. (page 36)
- A.R.S. §§32-1606, subsection B, and 32-1663, subsection D, be amended to provide the Board with additional disciplinary options such as: probation, decree of censure and fines. (page 37)
- The Board of Nursing should reassess the accreditation status of a nursing program to which it granted full accreditation in 1978. (page 43)

INTRODUCTION AND BACKGROUND

In response to a January 30, 1980, resolution of the Joint Legislative Oversight Committee, the Office of the Auditor General has conducted a performance audit of the State of Arizona, Board of Nursing. This performance audit was conducted as a part of the Sunset review process set forth in A.R.S. §§41-2351 through 41-2379.

In 1921, five years after Arizona's first nurses graduated from St. Mary's School of Nursing in Tucson, the Legislature established the State Board of Nurse Examiners, (later changed to the State Board of Nursing).

The Board currently consists of seven members: five Registered Nurse (RN) members and two public members who were added to the Board in 1979. In 1952, a five member practical nurse committee was established to assist and vote with the Board on matters pertaining specifically to Licensed Practical Nurses (LPNs).

The stated goal of the Board is to ensure safe and effective nursing services to the public. To accomplish this goal, a variety of functions are performed including: 1) examination of nursing applicants, 2) initial issuance and annual renewal of licenses, 3) accreditation of nursing schools, 4) certification of nurse practitioners (nurses skilled and trained in specialty areas), 5) receiving and investigating complaints, 6) holding hearings, and 7) disciplining nurses for violations of practice standards.

The Board has a substantial workload as shown in Table 1. In fiscal year 1980-81, 28,500 licenses were renewed, 3,000 temporary licenses were issued, 1,700 examinations were administered and 52 nurse practitioner certificates were issued.

TABLE 1

SUMMARY OF THE BOARD OF NURSING WORKLOAD
FROM FISCAL YEAR 1977-78 THROUGH 1980-81

	Fiscal Year			
	1977-78	1978-79	1979-80	1980-81
Initial licenses issued	1,296	1,298	1,723	1,531
Annual renewal licenses issued	22,835	24,585	26,599	28,445
Examinations administered	1,597	1,524	1,695	1,731
Licenses granted by endorsement	2,408	2,469	2,503	2,209
Requests for licensing information from other states processed*	953	985	1,057	1,129
Temporary permits issued	2,241	2,840	2,935	2,856
Nurse practitioner certifications issued	22	36	78	52

Table 2 summarizes the number and type of Board investigations and disciplinary actions from fiscal year 1977-78 through 1980-81.

* Nurses licensed in Arizona and moving to another state, then applying for a license.

TABLE 2

SUMMARY OF THE NUMBER AND TYPE OF
BOARD INVESTIGATIONS AND DISCIPLINARY ACTIONS
FROM FISCAL YEAR 1977-78 THROUGH 1980-81

	Fiscal Year			
	1977-78	1978-79	1979-80	1980-81
Investigations:				
Related to statements on applications	34	29	22	47
Related to complaints about licensees	30	35	62	82
Impostors	6	4	4	4
Number of hearings	7	6	11	12
Disciplinary actions taken against licensees:				
Following hearing:				
Revocation	5	4	9	6
Summary revocation	0	0	0	1
Suspension	2	0	1	3
No action	0	0	0	2
Without hearing:				
Denial	5	1	3	3
Summary suspension	0	1	0	3
Summary revocation	0	0	0	4
Suspension (by consent agreement)	0	1	3	8
Revocation (by consent agreement)	0	1	7	19
Reinstatement of license	0	7	1	2

The Board and its activities are funded through fees charged for examinations and licenses issued. Ten percent of the fees received is deposited in the State General Fund; the remaining 90 percent is used for Board operations within the limits of an annual budget approved by the Legislature. Table 3 summarizes the Board's revenues, expenditures and full-time equivalent positions from 1977-78 through 1980-81.

* A consent agreement is signed by a nurse named in a complaint who wishes to waive the right to a hearing and accept immediate suspension or revocation of his/her license.

TABLE 3

SUMMARY OF BOARD REVENUES, EXPENDITURES AND FULL-TIME EQUIVALENT POSITIONS FROM FISCAL YEAR 1977-78 THROUGH 1980-81*

	Fiscal Year			
	1977-78	1978-79	1979-80	1980-81
Revenues:				
Initial application for licensure	$159,200 **	$186,300	$189,900	$193,700
Renewal of licensure	242,600	262,400	276,300	290,300
Temporary permits	22,400	27,600	29,400	31,400
Miscellaneous income	8,400	20,900	25,200	25,500
	$432,600	$497,200	$520,800	$540,900
Expenditures:				
Personal services	$136,500	$154,300	$171,800	$204,300
Employee-related services	22,700	25,600	29,900	35,700
Professional and Outside services	46,700	49,500	46,900	67,400
Travel-in-State	7,700	8,300	7,900	11,500
Travel-Out-of-State	3,300	4,500	4,300	5,300
Other operating expenditures	44,000	46,600	53,700	58,000
Capital outlay	2,800	10,100	5,500	6,600
Refunds	0	100	200	100
Total	$263,700	$299,000	$320,200	$388,900
Full-time equivalent positions	10.5	10.5	11.5	11.5

The Office of the Auditor General expresses appreciation to the members of the Board of Nursing and its staff for their cooperation and assistance during the course of our audit.

* Source: Schedule four of the Budget Request from the Board for fiscal years 1977-78 through 1980-81.

** Rounded to nearest $100.

SUNSET FACTORS

In accordance with A.R.S. §§41-2351 through 41-2379, nine factors are considered to determine, in part, whether the Board of Nursing should be continued or terminated.

SUNSET FACTOR: THE OBJECTIVE AND PURPOSE IN ESTABLISHING THE BOARD

Arizona law does not specifically state the purpose of the Board; however, its statutory authority and duties include:

1. Examining and licensing applicants, (A.R.S. §§32-1644 through 32-1645);

2. Investigating complaints and denying, suspending or revoking licenses for violations of the nursing law, (A.R.S. §§32-1663 through 32-1664);

3. Accrediting schools and colleges of nursing, (A.R.S. §§32-1644 through 32-1645); and

4. Promulgating rules and regulations governing the practice of nursing, (A.R.S. §32-1606).

In addition, in its fiscal year 1980-81 budget request, the Board of Nursing stated the following as its goal:

> "(To) ensure that the public gets a quality and quantity of nursing services, that are safe, effective and meet the parameters of society's needs in terms of honesty, integrity and morality."

SUNSET FACTOR: THE DEGREE TO WHICH THE BOARD HAS BEEN ABLE TO RESPOND TO THE NEEDS OF THE PUBLIC AND THE EFFICIENCY WITH WHICH IT HAS OPERATED

Based upon our review, the Board appears to have responded to all complaints received, increased its investigative resources, and improved the certification of nurse practitioners by hiring a Nurse Practitioner Consultant in January of 1980.

The Board also appears to have operated efficiently. The number of investigations conducted by the Board has increased 90 percent from fiscal year 1977-78 to fiscal year 1980-81, compared to a 47 percent increase in expenditures and a staff increase of one full-time position during the same period.

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS OPERATED WITHIN THE PUBLIC INTEREST

The Board has operated within the public interest in its complaint investigation and licensure processes; however, the Board should reassess the accreditation status of a nursing program to which it granted full accreditation in 1978. (page 39)

SUNSET FACTOR: THE EXTENT TO WHICH RULES AND REGULATIONS PROMULGATED BY THE BOARD ARE CONSISTENT WITH LEGISLATIVE MANDATE

The Attorney General has found that Board promulgated rules and regulations are consistent with statutory mandate.

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ENCOURAGED INPUT FROM THE PUBLIC BEFORE PROMULGATING ITS RULES AND REGULATIONS AND THE EXTENT TO WHICH IT HAS INFORMED THE PUBLIC AS TO ITS ACTIONS AND THEIR EXPECTED IMPACT ON THE PUBLIC

A statewide public opinion survey, commissioned by the Office of the Auditor General, found that over half of the public is aware of the Board of Nursing. Public awareness of the Nursing Board is greater than awareness of most other health regulatory boards included in the survey.

The Board is attempting to become more visible through its involvement in a Manpower Study of nursing and the scheduling of several meetings to better inform the nursing community of Board functions. (page 25)

SUNSET FACTOR: THE EXTENT TO WHICH THE AGENCY HAS BEEN ABLE TO INVESTIGATE AND RESOLVE COMPLAINTS THAT ARE WITHIN ITS JURISDICTION

Our review found that the Board of Nursing complaint investigations are thorough, timely and well-documented; however, it appears that the Board has not been receiving all complaints that are within its jurisdiction. In addition, expanding the Board's disciplinary options, now limited by law to suspension, revocation or denial of a license, would allow the Board more flexibility in responding to violations. (page 25)

SUNSET FACTOR: THE EXTENT TO WHICH THE ATTORNEY GENERAL OR ANY OTHER APPLICABLE AGENCY OF STATE GOVERNMENT HAS THE AUTHORITY TO PROSECUTE ACTIONS UNDER ENABLING LEGISLATION

The Attorney General has the authority to prosecute violations of Board statutes; however, options appear to be too restricted. (page 25)

SUNSET FACTOR: THE EXTENT TO WHICH THE BOARD HAS ADDRESSED DEFICIENCIES IN ITS ENABLING STATUTES WHICH PREVENT IT FROM FULFILLING ITS STATUTORY MANDATE

Although the Board has expressed dissatisfaction with some of the provisions of A.R.S. §§32-1633 and 32-1638 pertaining to examinations, it has not officially proposed statutory changes.

SUNSET FACTOR: THE EXTENT TO WHICH CHANGES ARE NECESSARY IN THE LAWS OF THE BOARD TO ADEQUATELY COMPLY WITH THE FACTORS LISTED IN THIS SUBSECTION

For a discussion of this issue see pages 14, 24 and 36.

FINDING I

THE STATE BOARD TEST POOL EXAMINATION FOR REGISTERED NURSES AND LICENSED PRACTICAL NURSES IS NOT SCORED IN ACCORDANCE WITH STATUTORY REQUIREMENTS.

Arizona law requires applicants for licensure as a Registered Nurse or a Licensed Practical Nurse to pass a written examination with a score of 70 percent or more. Arizona, like most states, uses a written examination that is prepared and graded by the National League for Nurses. Our review of the manner in which the national examination is graded revealed that: 1) it is not scored in accordance with the Arizona requirements, and 2) 36 percent and 11 percent of the Registered Nurse and Licensed Practical Nurse applicants, respectively, who passed the national examination in 1980, would not have passed if the passing score had been equivalent to that required by Arizona law.

Arizona Examination Requirements

Arizona Revised Statutes §§32-1633 and 32-1638 requires Registered Nurse and Licensed Practical Nurse applicants to pass a written examination with a score of 70 percent or more in order to be licensed by the Board as stated in part by A.R.S. §32-1633:

> "An applicant shall be required to pass with a grade of seventy percent or more a written examination in such subjects relating to the duties and services of a registered nurse taught in an accredited school of professional nursing as the board determines and, in the discretion of the board, a supplemental oral or practical examination covering such subjects...." (Emphasis added)

A.R.S. §32-1638 states:

> "An applicant shall be required to pass, with a grade of seventy percent or more a written examination in such subjects relating to the duties and services of a practical nurse taught in an accredited school of practical nursing...." (Emphasis added)

Examination and Grading Procedures Used

In 1945, the Board of Nursing adopted the State Board Test Pool Examination (SBTPE), prepared by the National League for Nurses Testing Service (NLN), as the Board's written examination required for licensing of RNs and LPNs. Every state, except California,* uses the SBTPE as their written examination.

Our review of the manner in which the SBTPE is graded revealed that it is not scored in accordance with Arizona statutory requirements. In grading the SBTPE, the NLN has arbitrarily adopted 350 points on its examination as the minimum passing score. The 350 point criteria reportedly approximates one and one half standard deviations below the mean (average) score. In addition, through a rather complicated process the NLN converts the applicant's raw score first to a corrected raw score which is eventually compared to the 350 point passing criteria to determine if the applicant passed the examination.

When audit staff analyzed the above grading procedures it was determined that the 350 point passing criteria recommended by NLN was lower than the 70 percent score specified in Arizona law. For example, the 350 point criteria for the February 1979 SBTPE Registered Nurse examination was equivalent to a score of only 60 percent as opposed to the 70 percent score specified in A.R.S. §32-1633.

Table 4 compares the scores required to pass the SBTPE for Registered Nurses and Licensed Practical Nurses during 1979 and 1980 to the 70 percent score required in A.R.S. §§32-1633 and 32-1638.

* California designs its own examination for LPNs.

TABLE 4

COMPARISON OF SCORES REQUIRED TO PASS THE SBTPE FOR REGISTERED NURSES AND LICENSED PRACTICAL NURSES DURING 1979 AND 1980 TO THE 70 PERCENT SCORE REQUIRED IN A.R.S. §§32-1633 AND 32-1638

Test Date	Score Required to Pass the National Nursing Examinations	Required Score Per A.R.S. §§32-1633 and 32-1638
RN Examination		
February 1979	60%	70%
July 1979	62	70
February 1980	63	70
July 1980	63	70
LPN Examination		
April 1979	65	70
October 1979	61	70
April 1980	65	70
October 1980	63	70

As shown above, the SBTPE administered in 1979 and 1980 required a passing score ranging from 60 to 63 percent for the four RN examinations and 61 to 65 percent for the four LPN examinations.

Compliance

According to the Legislative Council in an opinion dated July 1, 1981,* use of a passing score on the examination which is below 70 percent is not in compliance with law:

> "One of the fundamental rules of statutory construction is that plain, clear and unambiguous language is to be given that meaning...it is obvious that correctly answering 65 percent of the questions to obtain a point score of 350 is not the equivalent of the statutory requirement of a 70 percent grade." (Emphasis added)

Furthermore, according to the Council, licenses defectively or illegally granted by the Board could be revoked.

* See Appendix I for full text.

> "A license issued by the Board...authorizes the nurse to practice until notified of a defect or illegality in the issuance of the license...the Board may revoke a license for any reason that would have justified a refusal to issue the license initially, including the failure to achieve a passing examination grade." (Emphasis added)

We estimate that 36 percent and 11 percent of the Registered Nurse and Licensed Practical Nurse applicants, respectively, who passed the SBTPE in 1980 would not have passed if Arizona law had been followed.* Table 5 summarizes the number and percentage of applicants who passed the SBTPE in 1980 but who did not score 70 percent or more.

TABLE 5

SUMMARY OF THE NUMBER AND PERCENT OF APPLICANTS WHO PASSED THE SBTPE IN 1980 BUT WHO DID NOT SCORE 70 PERCENT OR MORE

Type of Applicant	Number of Applicants Who Passed the SBTPE	Number and Percent of Passing Applicants Who Did Not Score 70	
Registered Nurses	839	304	36%
Practical Nurses	518	59	11
Total	1,357	363	

Because of time constraints audit staff restricted its analysis of the SBTPE to 1980. If the results depicted in Table 5 are representative of other years as well, a substantial percentage of Registered Nurses, and to a lesser degree Licensed Practical Nurses, who have been licensed by the Board did not pass the written examination as required in Arizona statutes.

* The actual numbers of licenses granted may be slightly less since some applicants who took the examination may have withdrawn their application or chosen to be licensed in another state.

Other State Score Requirements

It should be noted that most states accept the 350 point passing criteria recommended by the NLN as meeting examination requirements. In fact, only one* and five** states, require scores of more than 350 points to pass the Registered Nurse and Licensed Practical Nurse examinations, respectively.

Further, most states have adopted a general statutory provision which allows their Board of Nursing to establish a passing score on the licensing examination through Administrative Rules and Regulations. Model legislation developed by the American Nurses' Association (ANA) also recommends that the passing score be established by Boards of Nursing through their rules.

> "The applicant shall be required to pass a written examination in such subjects as the board may determine. Each written examination may be supplemented by an oral or a practical examination. The board may use any part or all of the State Board Test Pool Examination for registered/practical nurse licensure, its successor examination, or any other nationally standardized examination identified by the board in its rules. The passing score shall be established by the board in its rules." (Emphasis added)

According to the ANA, this language allows for flexibility in determining examination content and authorizes the use of a national standardized examination to facilitate interstate licensure.

CONCLUSION

The written examination for Registered Nurses and Licensed Practical Nurses is not scored in accordance with statutory requirements. As a result, 36 percent and 11 percent of the Registered Nurse and Licensed Practical Nurse applicants, respectively, who passed the written examination in 1980, would not have if Arizona law had been followed.

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* Hawaii

** Hawaii, Minnesota, New Jersey, Washington and Wisconsin.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. A.R.S. §§32-1633 and 32-1638 be amended to grant the Board authority to set the passing score on its written examination through its rules and regulations.

2. That the validity of licenses issued prior to such a revision be recognized.

FINDING II

STATUTORY CHANGES ARE NEEDED REGARDING THE COMPOSITION OF THE BOARD OF NURSING.

The Board of Nursing is composed of five Registered Nurses (RNs) and two public members.* In 1952, a five member practical nurse committee was created to assist the Board and vote on matters pertaining only to Licensed Practical Nurses (LPNs).

Our review of the composition of the Board of Nursing revealed that unlike most states, Arizona does not allow full LPN representation on the board responsible for regulating nursing. As a result:

- A substantial segment of the nursing profession in Arizona is not fully represented on the Board.
- The dual Board/LPN committee structure causes confusion as to responsibilities and authority, and impairs the Board's efficiency.
- The subordinate role currently afforded LPNs has caused strained relationships between Board and practical nursing committee members.

It appears that the Board's effectiveness would be enhanced if LPNs were added to the Board's membership.

Current Structure

A.R.S. §32-1602 establishes the Board of Nursing consisting of five registered nurses and two public members:

* Public members were added to the Board in 1979.

> "There shall be a state board of nursing which shall consist of seven members appointed by the governor. Five members shall be registered nurses. Two members shall represent the public and shall not be persons who are licensees of any health occupation board, employees of any health care facility, agency or of a corporation authorized to underwrite health care insurance or who have financial interests in or are engaged in the governance or administration of a health care facility, agency or corporation. Members shall be appointed for a term of five years, to begin and end on June 30."

In addition, a practical nurse committee was established in 1952 to advise the Board and vote on matters pertaining to practical nursing. A.R.S. §32-1607 states:

> "There shall be a practical nurse committee which shall consist of five members appointed by the Governor. All the members shall be licensed practical nurses under the provisions of this chapter. One member shall be appointed each year for a term of five years, to begin and end June 30.
>
> . . . . . .
>
> "The committee shall assist, consult and advise the board with respect to practical nursing matters and with respect to examination and licensing of persons applying for a license to practice and assume the title of practical nurse. Action as to such matters shall be taken only upon a majority vote of the combined membership of the practical nurse committee and the board." (Emphasis added)

Interviews with individuals formerly involved with the Board revealed that a separate practical nurse committee was established in 1952 as a compromise between the position of the Registered Nurses (RNs) who opposed including Licensed Practical Nurses (LPNs) on the Board and the LPNs who wanted Board representation.

The primary differences between an RN and an LPN are: education, supervision requirements, responsibilities and practice functions. Table 6 compares RNs to LPNs.

TABLE 6

COMPARISON OF THE LICENSED PRACTICAL NURSE AND THE REGISTERED NURSE

	Licensed Practical Nurse	Registered Nurse
1. Degree earned	Diploma or certificate from an accredited school of practical nursing or the equivalent as determined by the Board	Diploma or certificate from an accredited school of professional nursing
2. Objectives of training	Basic bedside care	Advanced bedside care, Leadership Administration
3. Education received	Basic nursing skills in Medical, Surgical, Obstetric and Pediatric areas, with integration of Psychiatric Nursing and Pharmacology concepts	a. Basic nursing skills in Medical, Surgical, Obstetric, Pediatric and Psychiatric areas b. Advanced nursing skills c. Leadership management skills d. Liberal Arts background
4. Requirement for licensure	a. Good moral character b. Good health c. Completion of two years of high school or equivalent or equivalent d. Completion of an accredited practical nurse program	Same as LPN; however, must complete professional nurse program at an accredited school and four years of high school or its equivalent
5. Examination	Successfully pass SBTPE* for practical nurses	Successfully pass SBTPE for professional nurses
6. Supervision requirements	May practice nursing only under the supervision of an RN or physician	None
7. Functions	R4-19-42. Functions of the Licensed Practical Nurse. A. A licensed practical nurse may provide nursing care only under the supervision of a registered nurse or licensed physician. B. The licensed practical nurse performs the following functions: 1. Participate with registered nurses in the planning, implementation and evaluation of nursing care by: a. Providing for the emotional and physical comfort of patients; b. Observing, recording and reporting the condition of the patient, signs and symptoms which may be indicative of change in the patient's condition to the appropriate person;	R4-19-43. Functions of the Registered Nurse. A. The registered nurse shall be responsible and accountable for making decisions that are based upon educational preparation and experience in nursing. B. The registered nurse shall be held accountable for the quality and quantity of nursing care given to patients. This includes: 1. Providing the nursing leadership in the planning for and provision of nursing care to patients; 2. Giving direct nursing care to each patient according to needs or assigning these functions to assistants in accordance with the preparation and competency of the available staff;

* SBTPE is the State Board Test Pool Examination.

Table 6 (Cont'd)

7. Functions (Concl'd)	Licensed Practical Nurse	Registered Nurse
	c. Performing nursing procedures for which the preparation of the licensed practical nurse has provided the necessary degree of skill and judgment; d. Assisting with the rehabilitation of patients according to the patient's care plan.	3. The direction and continuous evaluation of nursing practice; applying nursing knowledge, administrative techniques and teaching principles toward the ultimate goal of excellence in patient care and promotion of good health practices; 4. Continuous effort to recognize the abilities and potentialities of all nursing personnel and to assist each individual in an attempt to attain optimum performance; 5. Assessing the patient's needs, planning for implementing and evaluating the nursing care of each patient; 6. Organizing, administering, and supervising the implementation of a written nursing care plan for each patient. C. The registered nurse shall be held accountable for the quality and quantity of nursing care given to patients rendered by self or others who are under his or her supervision. 1. The registered nurse may: a. Assign specific nursing duties to other qualified personnel; b. Assign the administration of medications to other licensed nurses only; c. Assign the duties or rendering treatments to licensed nurses or auxiliary workers based upon their educational preparation and experience. 2. The registered nurse shall appraise the care given by the licensed nursing staff and auxiliary workers under his or her direction and shall give assistance as needed. 3. The registered nurse is responsible for the clinical nursing record which reflects the patient's nursing care and progress. The registered nurse may delegate some portions of the recording of the care given and the observations made to the assistants who have rendered the service.

Most Other States Have LPN Representation on the Regulatory Board

Arizona is one of only three states that do not have an LPN representative on the board that regulates nurses. Of the remaining states, 41 include LPNs on the board and seven have separate LPN regulatory boards. Table 7 summarizes the nursing board compositions in the 50 states and the District of Columbia.

TABLE 7

SUMMARY OF NURSING BOARD COMPOSITIONS IN THE 50 STATES AND THE DISTRICT OF COLUMBIA

LPN Representation on Board		No LPN Representation	Separate LPN Board	LPN Advisory Council
Alabama	Nevada	Alaska	California	Arizona
Arkansas	New Hampshire		Georgia	Idaho
Colorado	New Jersey		Louisiana	
Connecticut	New Mexico		Montana	
Delaware	New York		Washington	
Florida	North Carolina		West Virginia	
Hawaii	North Dakota		District of Columbia	
Illinois	Ohio			
Indiana	Oklahoma			
Iowa	Oregon			
Kansas	Pennsylvania			
Kentucky	Rhode Island			
Maine	South Carolina			
Maryland	South Dakota			
Massachusetts	Tennessee			
Michigan	Texas			
Minnesota	Utah			
Mississippi	Vermont			
Missouri	Virginia			
Nebraska	Wisconsin			
	Wyoming			

The average composition for those boards with full representation is five RNs, two LPNs and two public members. Audit staff contacted boards in Indiana, Nebraska, New Mexico, Nevada, Oregon, Rhode Island, Virginia and Wyoming regarding the workability of combined boards. All respondents stated that the representatives of the various factions were active board participants and worked well together.

A Substantial Segment of the Nursing Profession in Arizona Is Not Fully Represented on the Board

When the practical nursing committee was established in 1952, there were 106 LPNs in Arizona, or only two percent of the nursing professionals. However, by 1980, the number of LPNs had grown to 7,763, or 25 percent of the nursing professionals in Arizona. Table 8 summarizes the growth of LPNs relative to RNs in Arizona from 1952 to 1980.

TABLE 8

SUMMARY OF THE GROWTH OF LPNs RELATIVE TO RNs IN ARIZONA
1952 TO 1980

	Number		Percentage of Nursing Professionals	
Year	LPNs	RNs	LPNs	RNs
1952*	106	5,376	2	98
1962**	1,754	7,675	19	81
1967	2,414	9,368	20	80
1972	3,988	12,729	24	76
1977	5,764	17,615	25	75
1980	7,763	23,865	25	75

As shown above, a substantial segment of the nursing professionals in Arizona are not fully represented on the Board.

Confusion as to Responsibilities And Authority and Impaired Efficiency

The current Board/committee structure has caused confusion in voting, unnecessary administrative work and inefficient use of Board time.

During our review, several cases were observed in which LPN committee members made and seconded motions as well as voted in matters pertaining to RNs. The following are examples:

* Source: Registry of Nurses, Board Office.

** Figures for RNs and LPNs from 1962 through 1980 were obtained from statistical records at the Board office.

January 1978

A motion was made that the Board ratify licenses for both RNs and LPNs and certify an expanded role for RNs. The motion was moved by an RN member of the Board and seconded by an LPN member of the practical nurse committee.

March 1980

A motion was made that the Board ratify licenses for RNs. The motion was made by an LPN member of the practical nurse committee.

In a memorandum dated July 23, 1981,* the Legislative Council stated that LPN committee members do not have authority to make motions, second motions, or vote on matters involving registered nurses:

> "The authority of the committee members does not extend to matters concerning registered nurses...it would be improper for committee members to make motions, second motions or vote on registered nursing matters or matters involving registered nurses and practical nurses." (Emphasis added)

Furthermore, according to the Council improper LPN voting could invalidate Board actions:

> "A motion or vote by a Committee member on a registered nursing matter might invalidate the action of the board because they are not members of the Board for that purpose...."

* See Appendix II for full memorandum text.

Unnecessary Administrative Work
And Inefficient Use of Board's Time

The dual Board/committee structure requires additional administrative work because two separate agendas must be set. During regular Board meetings, one day is normally devoted to registered nursing matters handled by the Board alone. A second day is scheduled as a combined Board/committee meeting which concentrates on practical nursing matters. Determining when to schedule and how to handle general nursing matters affecting both classes of nurses has caused difficulties in setting the two agendas.

In addition, the dual Board/committee structure has resulted in inefficient use of Board time given the Board's heavy workload and busy meeting schedule. We noted in our review of Board agendas and minutes of meetings, that general matters were often discussed twice; once during the Board only meeting day, and again at the combined meeting of the Board and committee. General matters usually include: 1) manpower study reports,* 2) nursing conventions, and 3) credentialing reports.**

Strained Relationships Between Board
And Practical Nursing Committee Members

The current dual Board/committee structure has resulted in poor communication and strained relationships between Board and practical nurse committee members.

Board and committee members interviewed during our audit made numerous references to the poor relationship between the Board and the committee. The following are examples of comments made:

* See page 47 for a full discussion.

** Credentialing reports deal with a current American Nurses' Association study to critically examine, compare and evaluate all aspects of credentialing mechanisms in nursing service and education including accreditation, certification, licensing and academic degrees.

- "The current Committee/Board structure is not clearly understood and has caused misunderstandings.

- "(Committee members) are not given enough of a say in what goes on.

- "As long as there are RNs on the Board, 'we are peasants.' We are seen as not having the intellectual capacit , the educational ability or the experential background to make decisions. In essence, LPNs do more work in the hospital setting in direct patient contact than the RN.

- "It seem(s) like the LPN (isn't) getting any respect, yet sometimes, if it weren't for the LPN members there wouldn't be enough Board members for a meeting.

- "I think that the lines of communication could be opened...I think what we have to do is explain to the LPN what her role is.

- "The LPN functions almost like a second class citizen....

- "The LPN is in jeopardy. Too much regulation is exercised on them, yet no one is looking out for them.

- "RNs are as guilty as doctors in regards to treatment of LPNs. RNs treat LPNs as doctors treat RNs. I think LPNs have a great deal to offer and should have equal representation on the Board."

One of the major causes of this poor relationship appears to be the subordinate role of the committee members. The relationship between Board and committee members became especially strained following the termination of the Board's executive secretary in May 1981, because LPN committee members were excluded by law from voting on the matter. In addition, LPN committee members resent the fact that members of the public who have no formal training in nursing are represented on the Board while they are not.

One Board member stated that LPNs were properly represented given their educational background. By contrast, it was stated that the public members were qualified to serve on the Board due to their better educational background.

CONCLUSION

Because Arizona does not allow full LPN representation on the Nursing Board:

- Arizona is unlike the 41 states that do allow LPN representation.
- A substantial segment of the nursing professionals in Arizona is not fully represented on the Board.
- There are confused responsibilities and authority between the Board and the practical nurse committee and therefore the Board's efficiency is impaired.
- Relationships between Board and LPN members are strained.

It appears that the Board's effectiveness would be enhanced if LPNs were added to the Board's membership.

RECOMMENDATION

Consideration should be given to the following recommendations:

1. The practical nurse committee be eliminated; (A.R.S. §32-1607), and

2. A.R.S. §32-1602 be amended to add two actively practicing LPNs to the Board.

FINDING III

THE BOARD OF NURSING GENERALLY IMPOSES STRICT PENALTIES AGAINST NURSES NAMED IN COMPLAINTS. HOWEVER, THE BOARD NEEDS TO BETTER INFORM THE NURSING COMMUNITY AS TO WHAT CONSTITUTES INCOMPETENCY ON THE PART OF NURSES.

Arizona statutes require the Board of Nursing to investigate complaints against nurses, and suspend or revoke licenses for proper cause. Our review of the Board's handling of complaints revealed that:

- The Board has generally imposed strict penalties against nurses named in complaints.
- There is an apparent lack of knowledge within the nursing community as to what constitutes incompetency on the part of nurses. As a result, some incompetent nurses may be allowed to continue to practice nursing.
- The Board has limited disciplinary options when contrasted with other Arizona health regulatory boards.

Board Authority to Conduct Investigations

Arizona Revised Statutes provide the Board with the authority to investigate and discipline persons or institutions violating the Nursing Practice Act. A.R.S. §32-1606, subsection B, states that the Board shall:

> "3. Examine, license and renew the licenses of duly qualified applicants, and conduct hearings upon charges calling for suspension or revocation of a license or accreditation of schools of nursing, as provided in this chapter, and for proper cause may deny, suspend or revoke licenses or accreditation of schools of nursing.
>
> "4. Cause the prosecution of persons violating this chapter." (Emphasis added)

In addition, A.R.S. §32-1664, subsection A, states that:

"Upon the filing with the board of a sworn complaint charging a licensee with any conduct specified in §32-1663, subsection D, the board shall conduct an investigation thereof. For purposes of the investigation, the board may employ investigators. Evidence may be taken by deposition or affidavit." (Emphasis added)

Grounds for Board actions are established by A.R.S. §32-1663, subsection D:

"The Board may revoke or suspend any license to practice nursing issued under this chapter if the licensee is, after hearing found:

"1. Guilty of fraud or deceit in procuring or attempting to procure a license to practice nursing.

"2. To have been convicted of a felony or any offense involving moral turpitude.

"3. Guilty of procuring, aiding, abetting or attempting, agreeing or offering to procure or assist at a criminal abortion.

"4. Guilty of unprofessional conduct or unfit or incompetent by reason of negligent habits or other causes.

"5. Then (sic) habitually intemperate or addicted to the use of habit forming drugs, or mentally incompetent, or physically unsafe for nursing duty.

"6. To have had his license to practice nursing denied, suspended or revoked in another jurisdiction and not reinstated.

"7. Guilty of wilfully or repeatedly violating the provisions of this chapter." (Emphasis added)

"Unprofessional conduct" is defined by Board Rule R4-19-44:

"Pursuant to A.R.S. §32-1663, Subsection A, Paragraph 4, and Subsection D, Paragraph 4, the Board may take disciplinary action against a licensed nurse or an applicant for a nursing license for unprofessional conduct, unfitness, or incompetence by reasons of negligent habits or other causes. Unprofessional conduct, unfitness or incompetency by reasons of negligent habits or other causes is defined to mean and includes without limitation the following:

" 1. Gross negligence in the practice of nursing;

" 2. Failure to maintain minimum standards of acceptable and prevailing nursing practice;

" 3. Intentionally or negligently causing physical or emotional injury to a patient;

" 4. Unauthorized removal of narcotics, drugs, supplies, or equipment from any health care facility, school, institution or other work place location;

" 5. Failure to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient;

" 6. Falsifying or making materially incorrect, inconsistent or unintelligible entries in any patient records or in the records of any health care facility, school, institution or other work place location pertaining to the obtaining, possessing or administration of any controlled substance as defined in the Federal Controlled Substances Act;

" 7. Obtaining, possessing, administering or using any narcotic or controlled substance in violation of any Federal or State criminal law, or in violation of any health care facility, school, institution or other work place location policy;

" 8. Leaving a patient care nursing assignment without properly advising appropriate personnel;

" 9. The use of any intoxicating beverage or the illegal use of any narcotic or dangerous drug while on duty in any health care facility, school, institution or other work place location;

"10. Being under the influence of alcoholic beverages, or under the influence of illegal drugs or drugs which impair judgment while on duty in any health care facility, school, institution or other work place location;

"11. Engaging in fraud, misrepresentation, or deceit in writing the licensing examination;

"12. Impersonating another licensed practitioner;

"13. Permitting or allowing another person to use his or her license for the purpose of nursing the sick or afflicted for compensation;

"14. Abandoning or neglecting a patient requiring immediate nursing care without making reasonable arrangement for continuation of such care, or

"15. Unauthorized removal of a patient's life support system without appropriate medical or legal authorization."

Strict Penalties Against Nurses Named in Complaints

The Board has generally imposed strict penalties against nurses named in complaints. Table 9 summarizes the disciplinary action taken by the Board for complaints it received in 1979 and 1980. It should be noted that all complaints received by the Board are investigated.

TABLE 9

SUMMARY OF DISCIPLINARY ACTIONS TAKEN BY THE BOARD
FOR INVESTIGATIONS CONDUCTED DURING CALENDAR YEARS 1979 AND 1980

Disciplinary Action	Number	Percentage
Following hearing:		
Revocation	14	12%
Suspension	7	6
No action	4	4
Without hearing:		
Revocation by consent agreement	25	22
Suspension by consent agreement	10	9
Denial of full licensure*	5	4
No action - not enough evidence	13	12
No action - no jurisdiction	12	10
Pending as of December 31, 1980	8	7
Granted license**	7	6
Moved to other state***	5	4
Other****	5	4
	115	100%

As shown above, in 49 percent of the cases the Board revoked or suspended the license of nurses named in complaints received during 1979 and 1980.

According to the Board's executive secretary:

> "Strict penalties are imposed in the interest of the public. The Board considers its primary responsibility to be that of protecting the public. Serious consideration is given to complaints against nurses, especially those which are drug-related, because these complaints frequently involve situations which jeopardize patients' safety and well being."

* Complaints were against temporary permit holders.
** Complaints involved expired licenses.
*** Board will not allow renewal of license.
**** These were referred to other agencies.

When contrasted with other Arizona health regulatory boards, the percentage of Nursing Board complaints resulting in license revocation or suspension is high. Table 10 compares the Nursing Board's revocation or suspension percentage with five other Arizona health regulatory boards that have been reviewed by the Office of the Auditor General as of October 31, 1981.

TABLE 10

COMPARISON OF THE NURSING BOARD'S REVOCATION OR SUSPENSION PERCENTAGE WITH FIVE OTHER ARIZONA HEALTH REGULATORY BOARDS THAT HAVE BEEN REVIEWED BY THE OFFICE OF THE AUDITOR GENERAL AS OF OCTOBER 31, 1981

Arizona Health Regulatory Board	Number of Complaints Received	Period During Which Complaints Were Received	Percentage of Complaints Resulting in License Revocation or Suspension
The Arizona State Board of Dental Examiners	98	January 1, 1978 - December 31, 1978	0%
The Arizona Board of Optometry	78	January 1, 1975 - December 31, 1978	25*
The Board of Dispensing Opticians	96	January 1, 1976 - December 31, 1980	0
The Naturopathic Board of Examiners	6	January 1, 1980 - June 30, 1981	0
The Board of Medical Examiners	373	January 1, 1979 - June 30, 1980	0.5
The State Board of Nursing	115	January 1, 1979 - December 31, 1980	49

As shown above, the Nursing Board has revoked or suspended the license of a person named in a complaint far more frequently than the other health regulatory boards listed in Table 10.

* Revocations (5) were for not practicing in Arizona within 60 days of receiving a license by reciprocity. Suspensions (2) were for misrepresentation, advertising and failure to register address with the county.

Lack of Knowledge as to What Constitutes Incompetency

A surprisingly low percentage of the complaints received by the Board in 1979 and 1980 were related to the competency of the licensee. Instead, most of the complaints were drug-related. This condition is apparently the result of a lack of awareness on the part of the nursing community as to what constitutes incompetency on the part of nurses and the Board's responsibilities regarding incompetent nurses.

Table 11 summarizes the nature of the complaints received by the Board during 1979 and 1980.

TABLE 11

SUMMARY OF THE NATURE OF COMPLAINTS RECEIVED BY THE BOARD DURING 1979 AND 1980

Nature of Complaint	Number	Percentage
Drug-related	72	63%
Unprofessional conduct	13	11
Competency	7	6
License expiration	7	6
Impostor	9	8
Other	7	6
	115	100%

As shown above, a vast majority of the complaints against nurses are drug-related, such as drug theft or drug abuse, whereas only six percent are related to issues of competency. The reason for such a low percentage of competency complaints appears to stem from a lack of knowledge on the part of the nursing community regarding the Board and its rules and regulations and a tendency on the part of the nursing institutions to handle competency issues in-house.

During the course of our audit we interviewed eight directors of nursing for Arizona hospitals and nursing homes regarding the Board and the complaint process. All of the directors said that they report drug-related complaints involving nurses to the Board; however only one stated that she reports matters involving competency to the Board.

Of the eight directors interviewed, four stated that they were unaware of the Board's jurisdiction in the area of nursing competency. In addition, one director stated that incompetency involved a general skill level and as such did not pose a direct threat to the safety of the patient. Therefore, such matters were properly handled "in-house." According to these directors, when a competency issue is handled in-house the facility: 1) tries to upgrade the nurse's skills; 2) transfers the nurse to a different unit; or 3) terminates the nurse with advice to take extra nursing courses. However, the facility does not usually contact the Board. One director of nursing offered the following explanation:

> "There is a lack of education of what the Board does in this area - people don't think of using the Board."

The nursing institutions' practice of handling competency issues in-house and not filing complaints with the Board poses a threat to the public in that an incompetent or even potentially dangerous nurse merely moves from one institution to another. Such movement from one institution to another is not only possible for most nurses but very likely, given the shortage of nurses in Arizona. The following case illustrates the point.

Case

In December 1980, a hospital investigating committee found that a nurse had abused an adolescent patient in November 1980. The nurse had pulled the patient's hair, squirted water in his face and banged his head against a counter, a brick wall, a door and a refrigerator door. The committee concluded that while the abuse was intentional in nature it was apparently not done with the purpose of causing physical harm to the patient because there was no resultant tissue damage. According to the committee's final report, the nurse "exercised extremely poor judgment" and showed "a lack of professionalism" on the evening of the incident. It was recommended that the nurse be terminated from employment at the hospital.

Comment

Although the nurse was terminated at the hospital, he subsequently found employment at another facility. Because the incident was not reported to the Board of Nursing it was not able to investigate the incident and take disciplinary action.

Perhaps another reason why competency issues are frequently not reported to the Board is a perception by nursing personnel that competency is not essential for certain types of nursing assignments and that nurses generally have a relatively low profile as far as the public is concerned. During our audit, a director of nursing for a private hospital stated that:

> "Competency cases are not sent to the Board. The Board of Nursing has never come out with a clear-cut policy statement in this regard, so I don't send any, although I have never had any (nurses) so incompetent that they couldn't handle a nursing home." (Emphasis added)

Further, when analyzing the complaints received by the Board during 1979 and 1980, we noted that less than five percent were from the public. That statistic, while not conclusive in and of itself, certainly indicates that nurses have less visibility than other types of health care providers in an institutional setting.

It should be noted that the Board held two conferences, in April 1980 and September 1981, at which disciplinary procedures were discussed. Further, the Board's rules, which clearly define unprofessional conduct, are available to licensees of the Board. However, it appears that the Board needs to take additional action, such as requiring reporting of Nursing Practice Act violations in its rules and regulations and mailing notifications to licensees, to increase nursing community awareness of the Board's role in competency issues.

Limited Disciplinary Options

A.R.S. §32-1606, subsection B, paragraph 3, authorizes the Board to suspend, revoke or deny a license to a nurse. However, those are the only options available to the Board and as such it has fewer disciplinary alternatives than most other Arizona health regulatory boards or nursing boards in other states.

In an opinion dated July 27, 1981,* the Legislative Council described the limits of the Board's disciplinary options:

> "The Board only has authority to revoke or suspend the license of an accused nurse who is found guilty of any of the actions set forth in A.R.S. §32-1663, subsection D. The Board does not have authority to order a period of probation or take other disciplinary action short of suspension or revocation of a license...."

According to the Council, the Board has more discretion in reissuing a suspended or revoked license under its Rule R4-19-45. Thus the Board can order a period of supervised practice and/or that other conditions be met before a reapplication for licensure is considered. Rule R4-19-45 states the following:

> "A. A nurse whose license to practice nursing has been suspended for a period of time shall automatically be reinstated at termination of the period of suspension as established by the Board if the stipulations in the order have been met.

* See Appendix III for memorandum text.

"B. A nurse whose license to practice nursing has been denied or revoked, may make application to the Board after a period of two years for the issuance of a denied license or reissuance of a revoked license under the following terms and conditions:

"1. An application shall be submitted in writing, verified under oath, and shall contain therein or have attached thereto substantial evidence that the basis for denial or revocation has been removed and that the issuance of a license will no longer constitute a threat to the public health or safety.

"2. The Board shall consider the application and may designate a time for the applicant to appear at a regularly scheduled meeting of the Board so that evidence of qualification and competency to practice can be presented.

"3. After reviewing the evidence and deliberating the matter, the Board may grant the applicant a temporary permit to practice for a time period specified, or the Board may deny the application.

"4. The Board may require that the applicant complete a specified period of supervised practice. On completion of the supervised practice period, the Board will consider the evaluation of the applicant's performance. In narcotic cases, the Board may require periodic psychological or psychiatric evaluations and reports, urinalysis and affidavits concerning narcotic use. These conditions must be met before an application is considered."

Thus, the Board can order a period of supervised practice (probation), but only after suspending or revoking a license.*

The Board's disciplinary options appear to be too restrictive when contrasted with other Arizona health regulatory boards. Table 12 compares the Board's disciplinary options with the other Arizona health regulatory boards.

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* It should be noted that according to the Board's assistant Attorney General, the Board can impose probation on a nurse named in a complaint, if the nurse consents to such action.

TABLE 12

COMPARISON OF THE NURSING BOARD'S DISCIPLINARY OPTIONS WITH THE OTHER ARIZONA HEALTH REGULATORY BOARDS

	Disciplinary Options							
	Deny	Suspend	Revoke	Censure	Reprimand	Probation	Fine	Other
Nursing Board	X	X	X					
Podiatry Examiners	X	X	X	X		X		
Chiropractic Examiners	X	X	X	X			X	
Dental Examiners	X	X	X	X		X	X	
Medical Examiners	X	X	X	X		X		
Naturopathic Examiners	X	X	X	X		X		
Dispensing Opticians	X	X	X					
Optometry	X	X	X	X		X		
Osteopathic Examiners	X	X	X	X		X		
Pharmacy	X	X	X			X		
Physical Therapy Examiners	X	X	X	X		X	X	
Psychologist Examiners	X	X	X			X		
Veterinary Examiners	X	X	X				X	
Medical Radiologic Technician Examiners	X	X	X	X	X	X		X
Homeopathic Examiners	X	X	X					
Nursing Care Institution Examiners	X	X	X	X		X		

Further, 25 other states statutorily provide their nursing boards with either additional options, such as probation, reprimand and censure, or broad discretionary authority with regard to discipline.

Finally, Board members, staff and officials in the nursing community indicated a need for a broader range of Board disciplinary options. For example, the following comments were made:

> "1. I would like to see added: probation, reprimand, censure....
>
> "2. The Board should be given broader disciplinary options...but they should be spelled out.
>
> "3. There may be a need...for a probation option....
>
> "4. The Board should be able to place a nurse on probation."

CONCLUSION

While the Board has generally imposed strict disciplinary penalties against nurses named in complaints, it appears that the nursing community is frequently not filing complaints with the Board when the issue is one of a nurse's competency. This absence of competency complaints apparently stems from a lack of knowledge within the nursing community regarding the Board and a tendency on the part of nursing institutions to handle competency issues in-house. Finally, the Board lacks disciplinary options when contrasted with other Arizona health regulatory boards.

RECOMMENDATIONS

Consideration should be given to the following recommendations:

1. The Board notify license holders of the Board's responsibilities to investigate and resolve issues involving competency.

2. The Board amend its rules and regulations to include failure of a licensee to report violations of the Nursing Practice Act as unprofessional conduct.

3. A.R.S. §§32-1606, subsection B, and 32-1663, subsection D, be amended to provide the Board with additional disciplinary options such as probation, decree of censure and fines.

FINDING IV

THE BOARD OF NURSING NEEDS TO REASSESS A NURSING PROGRAM TO WHICH IT GRANTED FULL ACCREDITATION IN 1978.

The Board of Nursing is required by law to establish minimum standards for schools of nursing, and to accredit and approve nursing programs which meet the Board's requirements. A review of schools approved by the Board revealed that the Board should reassess a nursing program to which it granted full accreditation in 1978.

Board Authority To Approve Nursing Schools

Arizona Revised Statutes §32-1606 requires the Board to establish minimum standards for nursing schools and to accredit nursing programs:

> "B. The Board shall:
>
> "1. Establish minimum curricula and standards for schools of nursing and courses preparing persons for licensing under this chapter and provide for surveys of schools and courses it deems necessary.
>
> "2. Accredit schools and approve courses meeting the requirements of this chapter and of the board." (Emphasis added)

When an institution is considering a nursing program it must apply to the Board for initial approval submitting a preliminary report of its plans.

Once initial approval is granted a survey visit is conducted by a staff member, and one or two consultants. Based on their report the Board will grant or deny provisional accreditation.

After the program has graduated its first class, it becomes eligible for full accreditation. Thereafter, the program is revisited at least every four years. If the report is satisfactory, full accreditation is continuous.

There are currently 11 practical nurse programs, 14 Associate Degree professional nurse programs and four Baccalaureate Degree professional nurse programs.*

One School Should
Be Reassessed

Our review of schools accredited by the Board of Nursing revealed that the Board accredited a nursing program in 1978 that may not meet accreditation standards established by the Board in 1980. As a result, the Board should reassess its accreditation of the program. The following is a summary of the program's history and accreditation problems.

In June 1970, the Board of Nursing granted provisional accreditation to the school for an Associate Degree* nursing program. The school, located on an Indian Reservation, planned to serve a majority of Native American students and increase the number of trained nurses working in the Indian nation. The program graduated its first two students in 1973.

In 1975, the program was placed on conditional status by the Board because it lacked a director and a stable faculty. The school suffered a high turnover of faculty partly because of its remote location.

In 1976, additional concerns were raised about the school. These concerns included: 1) poor clinical facilities; 2) lack of ethnic culture content in the curriculum, with carryover to clinical experience; and 3) a high failure rate on the State Board Test Pool Examination (SBTPE).

* The Associate Degree program is a two-year Registered Nurse (RN) program.

In 1977, a survey visit by the Board of Nursing revealed that the program's deficiencies had not been corrected, and in 1978 accreditation was removed by the Board. However, at a subsequent hearing requested by the school, the Board changed its decision and suspended the school's accreditation for seven months pending another survey visit and the results of the next state licensing examination.

A survey team revisited the school and found that several improvements had been made including a new basic curriculum, better clinical experience, better nursing program administration and better faculty preparation. The team recommended full accreditation, however, it found teaching deficiencies, faculty instability and a continuing high failure rate on the state examination. The team also expressed concern regarding the effectiveness of the new curriculum.

1978 Accreditation Standards
versus 1980 Accreditation Standards

The Board's accreditation standards in 1980, differ somewhat from its standards in 1978. A major difference between the two standards concerns the passing requirement on the licensing examination. In 1980, the Board promulgated R4-19-14, subsection A, paragraph 9, which requires that at least 80 percent of the graduates of a nursing program, pass the state licensing examination on their first writing in order for the program to obtain and maintain full accreditation.

Rule R4-19-14, subsection A, paragraph 9 states the following:

"State Board Test Pool Examination: The minimum requirement is that 80 percent of the first time candidates writing in this State must achieve a passing standard score determined by the board. The board may consider additional documented statistics concerning the State Board Test Pool Examination scores received in other states by Arizona graduates in determining compliance with this requirement. A written warning will be sent to nursing program officials when the total number of first time candidates passing is at or below 80 percent. Subsequent to the warning and within such time as it deems proper, the board will require an evaluation report identifying factors contributing to the high failure percentage and the corrective measures to be implemented. When information about any school program indicates there has been a below 80 percent passing rate of first time candidates on three consecutive examinations, full accreditation status shall be withdrawn and the program placed on conditional accreditation status until the criterion is met or for a maximum period of two years. If the criterion is not met within the designated time, the program shall be removed from the official list of accredited programs." (Emphasis added)

By way of contrast, in 1978, the Board's rule governing the use of the licensing examination as an accreditation standard stated:

"R4-19-14. Evaluation

...the Board in its evaluation of a program shall use as one of its tools the results of State Board Examination of candidates." (Emphasis added)

Further, the Board had a written policy, not a rule, which required the following:

"A school who has a failure rate of 20 percent or over on [the] State Board of Nursing Examination for three consecutive examinations will be placed on Conditional Approval. The Board of Nursing will request that the school evaluate the problem of failures and submit a plan to the Board as to how the problem might be corrected." (Emphasis added)

Had the Board adhered strictly to the above policy, it would not have accredited the subject nursing program because, from 1973 to 1978, only three of the school's 19 graduates (16 percent) had passed the Registered Nurse examination.

However, in November 1978, the Board did grant full accreditation to the school because: 1) the Board's assistant Attorney General advised them that the Board's denial of accreditation based upon a written policy, not a rule, would not withstand a legal challenge;* and 2) the school agreed: to publish its state licensing examination passage rate in the school catalog, to provide certain additional information to the Board, and to pledge continued cooperation to improve its program.

CONCLUSION

The Board of Nursing is required by law to establish minimum standards for schools of nursing. The Board should reassess one nursing program to which it granted full accreditation in 1978, because the school may not satisfy the accreditation standards established by the Board in 1980.

RECOMMENDATION

Consideration should be given to the following recommendation:

- The Board of Nursing should reassess the accreditation status of a nursing program to which it granted full accreditation in 1978.

* It should be noted that prior to 1978 the Board had placed three schools whose graduates had a failure rate on the examination in excess of 20 percent on conditional accreditation. One school subsequently lost accreditation for its registered nurse program in 1977, because the failure rate for its graduates remained in excess of 20 percent.

OTHER PERTINENT INFORMATION

During the course of our audit, we reviewed the following additional information pertaining to the Board of Nursing.

Nurse Practitioners

In 1980, the Board of Nursing certified approximately 52 Nurse Practitioners. Currently, there are 324 Certified Nurse Practitioners in Arizona with six types of certification available to them and a seventh in the rule adoption process. Nurse Practitioners are Registered Nurses who, by virture of additional training, have extended their role into specialty areas as authorized by the Board of Nursing through its rules and regulations. Table 13 summarizes the number, type and geographic location of the Nurse Practitioners certified by the Board as of July 1981.

TABLE 13

SUMMARY OF THE NUMBER, TYPE AND GEOGRAPHIC LOCATION OF THE NURSE PRACTITIONERS CERTIFIED BY THE BOARD AS OF JULY 1981

	Type of Certification						
Location	Nurse Midwife	Pediatric	Family	Adult	Ob/Gyn	Neo Natal	Total
Arizona:							
Apache County	10		3	2	2		17
Coconino County		2	3	2	2	1	10
Cochise County			3		1		4
Graham County							0
Greenlee County							0
Maricopa County	16	36	44	9	13	9	127
Mohave County		1	5				6
Gila County		1	1		1		3
Navajo County	1	1	6	1			9
Pima County	10	12	50	2	23	5	102
Pinal County			1		2		3
Santa Cruz County			2				2
Yavapai County		1	1				2
Yuma County		1	3		2		6
Out-of-State	1	8	19	2	3		33
Total	38	63	141	18	49	15	324

A study conducted by the American Nurses' Association suggests that the certification of Nurse Practitioners may not be a proper area for state regulation. The study distinguishes between state licensure and certification by nongovernmental agencies or associations:

> "Licensure
>
> > "Licensure is a process by which an agency of state government grants permission to individuals accountable for the practice of a profession to engage in the practice of that profession and prohibits all others from legally doing so. It permits use of a particular title. Its purpose is to protect the public by ensuring a minimum level of professional competence. Established standards and methods of evaluation are used to determine eligibility for initial licensure and for periodic renewal. Effective means are employed for taking action against licensees for acts of professional misconduct, incompetence, and/or negligence.
>
> "Certification
>
> > "Certification is a process by which a non-governmental agency or association certifies that an individual licensed to practice a profession has met certain predetermined standards specified by that profession for specialty practice. Its purpose is to assure various publics that an individual has mastered a body of knowledge and acquired skills in a particular specialty." (Emphasis added)

Certification of nurse practitioners is authorized by A.R.S. §32-1601(5)(e):

> "The performance of such additional acts under emergency or other conditions requiring education and training and which are recognized by the medical and nursing professions as proper to be performed by a professional nurse under such conditions and which are authorized by the board of nursing in collaboration with the joint board of medical examiners and osteopathic examiners in medicine and surgery through its rules and regulations...."

Article V of the Board's Rules and Regulations on extended nursing practice define criteria for establishing nurse practitioner courses of study, educational requirements for certification, specialty areas in which certification may be granted, and circumstances under which drugs may be dispensed.

The Manpower Study

In June of 1981, four public meetings were held throughout Arizona, sponsored by various Arizona health agencies, to discuss the findings and recommendations of a study done by Eastwest Research Associates, Incorporated, under the guidance of the Nursing Manpower Project Advisory Council.

The study's goals were:

> "1. To determine the current supply of and demand for nurses in Arizona, and
>
> "2. To suggest a series of policy recommendations to meet future requirements."

With regard to the State's nursing shortage, the study reported:

> "The extent of Arizona's current professional nurse shortage is estimated to be 1,272 full-time equivalent positions, or about 8.3 percent of the current supply of nurses. About 60 percent of these positions are required by hospitals, 14 percent by nursing homes, 13 percent by physicians, and the remainder by other types of employers."

The following recommendations, some of which pertain to the Board of Nursing, were made by the Manpower Project to address the shortage of nurses in Arizona:

> "1. Creation of a statewide council of nursing in Arizona.
>
> "2. Implement changes in recruitment, retention, utilization and work environment for nurses in Arizona:

a. That Arizona nurses' associations and organizations including the Arizona State Board of Nursing:

1) Collaborate in developing and implementing strategies for the recruitment and retention of students and nurses in both educational and employment settings.

2) Continue to include nurses on councils, boards, committees, task forces, and advisory bodies which are charged to plan, organize, and implement health care services.

"3. Expand what the public knows of and expects from professional nurses:

a. That Arizona nurses' associations and organizations including the Arizona State Board of Nursing collaborate in a long-term effort to inform the public of nursing as a profession and how the practice of nursing impacts upon the delivery of health care.

"4. That the Arizona Board of Regents improve the articulation between LPN, diploma, ADM and BSN nursing programs in Arizona:

"5. That the Arizona State Board of Nursing improve Arizona's ability to plan for meeting its health care needs:

a. Improve the availability of data which reflects nursing supply and demand and ensure that data is available in a manner which permits ongoing planning for nursing manpower.

b. Enhance the compatibility of Arizona RN and LPN data to allow the exchange of information (with emerging state and regional data collection systems) as appropriate.

c. Compile annual data from Arizona schools of nursing on the number of applicants, admissions and graduates to facilitate planning for Arizona nursing manpower."*

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* See Appendix IV for full text.

Foreign Nurses

Most foreign nurses applying for licenses to practice in the United States have experienced difficulty passing state examinations. In Arizona, only 24 percent of the 348 foreign nurses who applied for a registered nursing license between 1978 and 1980 passed the state board examination at their first writing. Nursing Board staff attribute the high failure rate of foreign nurses to: 1) an inability to read and comprehend English adequately, 2) differences in nursing terminology in the U.S., and 3) use of a "multiple choice" testing format unfamiliar to foreign nurses.*

According to an official of the American Nurses' Association, nurses who fail registered nursing examinations in the U.S. often suffer personal hardships and can be exploited by employers. For example, some foreign-trained nurses unable to qualify for a U.S. license have to work as nurses aids, which are nonprofessional positions paying lower wages. In some cases, however, these nurses may still be required to perform professional nursing functions. Other foreign nurses who fail the RN exam reapply for LPN licenses and accept lower paying practical nursing positions. A few nurses who fail state licensing examinations face deportation.

To address this problem, the Commission on Graduates of Foreign Nursing Schools (CGFNS) has developed an examination, given in English in various countries around the world, which helps foreign nurses prepare for licensing examinations in the U.S. The examination tests English comprehension and nursing knowledge, and identifies deficiencies needing additional work. Nurses who pass the examination are issued a certificate by the Commission.

* Foreign nursing examinations are in essay form.

Currently, foreign nurses are required to hold the CGFNS certificate to be eligible for: 1) a Federal Immigration and Naturalization Service nonimmigrant occupational preference visa, and 2) Federal Department of Labor occupational preference visa and work permit available to immigrants entering the U.S.

In addition, a survey by the Commission on Graduates of Foreign Nursing Schools found that 25 states require foreign nurses to hold the CGFNS certificate prior to taking the state licensing examination. Most foreign nurses (about 78 percent) holding the certificate successfully pass licensing examinations given in the U.S.

Arizona State Board of Nursing
1645 W. JEFFERSON, SUITE 254
PHOENIX, ARIZONA 85007
PHONE 255-5092

December 10, 1981

Douglas R. Norton
Auditor General
State of Arizona
Phoenix, Arizona 85007

Dear Mr. Norton:

The attached report represents the response of the Arizona State Board of Nursing to the performance audit conducted by your Sunset Review Team.

If any questions should arise, please feel free to contact me.

Sincerely,

Sally A. Lewis/se

Sally A. Lewis, MPH, RN
President

cc: Gerald Silva, Performance Audit Manager

Arizona State Board of Nursing

Introduction

The Arizona Board of Nursing wishes to thank the Auditor General's Sunset Review Team for their cooperation in reviewing and reporting of this Board's activities.

Since the Board considers its primary responsibility to be that of protecting the public, it is pleased to read in this report that the Board has "revoked or suspended the license of a person named in a complaint far more frequently than the other health regulatory boards listed." In addition, the Board appreciates the Auditor General's acknowledgement that the Board has operated within the public interest in its complaint investigation and licensure process; that it has operated efficiently; and that "public awareness of the Nursing Board is greater than awareness of most other health regulatory boards ...."

Further, the Board is in agreement with all of the recommendations of the Review Team and has already made some procedural changes in addition to supporting the recommended legislative changes.

Recommended Legislation

The Sunset Review report recommends the Legislature consider the following amendments to the Board of Nursing's statutes:

1. To grant the Board authority to set the passing score on its written examinations through its rules and regulations.

   Comment: The Board agrees with the recommendation. This change will give the Board the flexibility to establish the passing score based upon the recommendations of the National Council of State Boards of Nursing to allow for the free movement of nurses between the states. For example, the state boards of nursing are adopting a comprehensive national licensing examination in July 1982 which will necessitate the establishment of a new passing score which is considered to be necessary for safe nursing practice. The Board plans to adopt the score which is consistent with the scores adopted by the majority of other states so that licensure of nurses in Arizona who graduate from programs in other states will be facilitated.

   In addition since there has been no evidence that public safety has been jeopardized by accepting the standard score of 350, which was equated to the 70% passing score in the Board's Rules and Regulations of 1964, the Board agrees that the validity of licenses issued prior to a revision in the law be recognized.

2. To add two actively practicing LPNs to the Board and to eliminate the practical nurse committee.

   Comment: The Board recognizes that the efficiency of carrying out its responsibilities would be enhanced by eliminating the practical nurse committee and including two actively practicing LPNs to full Board membership. The Board and the Practical Nurse Committee are in agreement with

this change in the Board's composition. The Board has requested the Legislative Council to draft language to implement the change.

3. To include failure of a licensee to report violations of the Nursing Practice Act as unprofessional conduct in its rules and regulations.

   Comment: The Board is concerned that relatively few complaints are submitted relating to incompetency in contrast to the number of complaints of drug and alcohol abuse. In September 1981, the Board invited the nursing administrators of all hospitals in Arizona to discuss the role and responsibilities of the Board as well as the employer's responsibility to report unsafe nursing practice. More than sixty nursing administrators were in attendance. Since that time, the Board has received and is investigating at least four complaints relating specifically to incompetent nursing practice.

   In addition, the Board has increased its efforts to disseminate information to its licensees as well as employers of nurses relating to in competency and unsafe nursing practice by providing copies of the law and rules and regulations to anyone calling the office for information, by speaking to and offering to speak to new employees during orientation, RNs enrolled in refresher courses, and other nursing organizations. The Board is planning a statewide conference on the Nurse Practice Act within the next year and plans to do this on an annual basis.

4. To provide the Board with additional disciplinary options such as probation, decree of censure and fines.

   Comment: The Board feels that the disciplinary action it has taken has been appropriate. Additional disciplinary options will provide the Board with more flexibility in carrying out its responsibilities.

Recommended Procedural Improvement:

The Sunset Audit Review report recommended that the Board should reassess the accreditation status of a nursing program to which it granted full accreditation in 1978.

Comment: The Board has continued to assess this school's nursing program as it does all nursing programs to determine whether they continue to meet the standards for accreditation. The Board assessed the progress of the Associate Degree nursing program referred to in the report since 1978 at the following Board meetings:

1/12/79 The Board reviewed the progress report submitted and noted that the faculty provided a review session to prepare its graduates for the February State Board Licensing examination; that the skills laboratory utilization had increased; that a faculty workshop on student evaluation and faculty development was planned; and that the licensing exam scores would be printed in the school catalog as had been agreed upon.

3/1/79 The Board reviewed and accepted the progress report submitted in compliance with the requirements established when the school was granted full accreditation in November 1978. The report included the school's plans for the establishment of a Task Force to study reasons for the high failure rate on the licensing exam and that the faculty was making special efforts to see that the objectives of the curriculum were fully met.

5/25/79 The Board received a school catalog which included the requirement that the results of the number of graduates writing and passing the state licensing exam be published.

1/3/80 The Board requested the presence of representatives from the program appear in person to present a progress report. The Board approved the request to delete information regarding state licensing exam results from catalog because of the negative effect on recruiting new students and on graduates of the program.

9/12/80 The Board was advised of the addition of another qualified faculty member.

11/14/80 The Board approved the request to extend the program from two to three years with multiple exit credentialing. Extension of the program would give the students more time for completion of the general education courses thus provide students an optimum environment for successful completion of objectives, reduce the high attrition rate, and increase the student's chance of success on the state licensing examination.

1/16/81 The Board accepted the annual report submitted by the school.

9/2/81 The Board tabled the request to approve two new clinical facilities until after the full on-site survey visit to be conducted in 1982.

Finally the Board has noted that progress in maintaining the criteria for full accreditation has been enhanced by the leadership of the current director of the nursing program who was hired in August 1978.

In summary,the Board as stated earlier considers its primary responsibility to be that of protecting the public and thus has worked diligently to carry out that responsibility. The Board will continue to objectively carry out its mandate. The Board feels that the recommendations of the Sunset Audit Review Team contribute to that goal.

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 1, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-56)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated June 8, 1981. No input was received from the attorney general concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) sections 32-1633 and 32-1638, subsection A state "/a/n applicant shall be required to pass, with a grade of seventy per cent or more, a written examination. . . ."

The state board of nursing (board) administers a national examination and accepts 350 "points" on the examination as a passing score. Documents at the board state that this point score can be obtained by correctly answering 54 to 65 percent of the questions on the registered nurse examination, and 61 to 65 percent of the questions on the practical nurse examination.

QUESTIONS PRESENTED:

1. Is the board in compliance with A.R.S. sections 32-1633 and 32-1638, subsection A if it accepts 350 points as a passing score?

2. If it is not, what are the ramifications to the license holder and to the board?

ANSWERS:

1. No.

2. See discussion.

DISCUSSION:

1. One of the fundamental rules of statutory construction is that plain, clear and unambiguous language is to be given that meaning unless impossible or absurd consequences may result. Balestrieri v. Hartford Accident and Indemnity Insurance Co., 112 Ariz. 160 (1975). Assuming that each question on the examination is given equal weight, it is obvious that correctly answering 65% of

the questions to obtain a point score of 350 is not the equivalent of the statutory requirement of a 70% grade.

The powers and activities of an administrative agency are prescribed and measured by law. Swift & Co. v. State Tax Commission, 105 Ariz. 226 (1969); Kendall v. Malcolm, 98 Ariz. 329 (1965). Although a national examination may provide convenience for the examinee, facilitate administration and promote uniformity among the states, these goals are irrelevant when in conflict with the statutory requirement. The examination must be administered in such a way as to require a passing grade of 70% or more.

It should be noted that the board may in its discretion, administer an oral or practical examination in addition to the written test. A.R.S. sections 32-1633 and 32-1638, subsection A. Even in such a case, the statutes still require a grade of 70% on the written portion.

2. A license issued by the board under color of law authorizes the nurse to practice until notified of a defect or illegality in the issuance of the license or until the license is revoked. The board has the authority to revoke a license for any reason that would have justified a refusal to issue the license initially. A.R.S. section 32-1606; 53 C.J.S. Licenses section 44 (1948).

CONCLUSION:

1. The examination must be administered so as to require a passing grade of 70% or more. Assuming each question is of equal weight, a point score of 350 does not meet the requirement of a 70% grade.

2. A licensee may continue to practice nursing until the license is revoked or notice is given of a defect or illegality in issuing the license. The board may revoke a license for any reason that would have justified a refusal to issue the license initially, including the failure to achieve a passing examination grade.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX II

LEGISLATIVE COUNCIL OPINION

O-81-67

JULY 23, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 23, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-67)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 10, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1602, subsection A provides for a State Board of Nursing (Board) consisting of seven members. A majority of the Board constitutes a quorum pursuant to A.R.S. section 32-1605, subsection B.

Arizona law also provides for a five member Practical Nurse Committee (Committee) to advise the Board on matters pertaining to practical nursing. A.R.S. section 32-1607, subsection D states that:

> The committee shall assist, consult and advise the board with respect to practical nursing matters and with respect to examination and licensing of persons applying for a license to practice and assume the title of practical nurse. Action as to such matters shall be taken only upon a majority vote of the combined membership of the practical nurse committee and the board. The practical nurse committee shall meet with the board at least annually.

On a few occasions, the Board has met with only three Board members present. One such meeting was a combined meeting with five members of the Committee. At this meeting, according to Board minutes, a motion was made by a Committee member to approve registered nurse (RN) licenses granted by endorsement. In addition, it was noted that, at other combined meetings, Committee members seconded motions and apparently voted on matters which involved both registered nurses and licensed practical nurses.

QUESTIONS PRESENTED:

1. Does the presence of three Board members and five Committee members constitute a quorum for conducting business at a combined meeting of the Board and the Committee?

2. Is it proper for Committee members to make motions, second motions or vote on matters which may involve registered nurses or both registered nurses and practical nurses?

3. What are the ramifications for the Board, if a quorum is not present at a combined Board-Committee meeting?

4. What are the ramifications if it is not proper for Committee members to make motions, second motions or vote on matters which involved registered nurses?

ANSWERS:

> 1. "Board" means the state board of nursing, and when used in connection with matters pertaining only to practical nurses or practical nursing, means the combined membership of the state board of nursing and the practical nurse committee provided for by this chapter. A.R.S. section 32-1601, paragraph 2.

The combined Board-Committee has twelve members, seven members from the Board and five members from the Committee.

A.R.S. section 1-216, subsection B provides that "/a/ majority of a board or commission shall constitute a quorum." A majority of the combined Board-Committee would be seven members. Eight members of the total of twelve members of the combined Board-Committee were present at the meeting described in the fact situation. A majority of the members was present. The three Board members and five Committee members present at that meeting constituted a quorum of the combined Board-Committee. It should be emphasized that the presence of the above mentioned members only constitutes a quorum for conducting business concerning practical nursing matters.

It should also be noted that, even though a quorum may have been present at the meeting, A.R.S. section 32-1607, subsection D requires a majority vote of the combined membership before any action may be taken. A majority vote of the total membership rather than a majority vote of the quorum present is required for an action of the combined Board-Committee to be valid. A.R.S. section 32-1607, subsection D.

2. Administrative agencies have no common law or inherent powers. Their powers are to be measured by the statutes under which they operate. Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965). A.R.S. section 32-1607, subsection D provides in relevant part as follows:

> /T/he committee shall assist, consult and advise the board with respect to practical nursing matters and with respect to examination and licensing of persons applying for a license to practice and assume the title of practical nurse. (Emphasis added.)

Committee members only have authority to participate in actions concerning practical nursing matters.

The authority of the committee members does not extend to matters concerning registered nurses. The Board is responsible for registered nursing matters and the combined Board-Committee is responsible for practical nursing matters. It would be improper for Committee members to make motions, second motions or vote on registered nursing matters or matters involving registered nurses and practical nurses.

3. As discussed in Answer 1, the three Board members and the five Committee members constitute a quorum of the combined Board-Committee for conducting business concerning practical nursing matters. If the voting requirements of A.R.S. section

32-1607, subsection D are satisfied the actions on practical nursing matters taken by that group are valid.

Actions taken on registered nursing matters with only three members of the Board present are void. It does not matter whether the actions were taken at a meeting of the combined Board-Committee or not. Registered nursing matters are to be considered by the Board. The presence of a quorum of the Board is necessary to act on such matters.

There are seven members on the Board. A.R.S. section 32-1602, subsection A. A.R.S. section 32-1605, subsection B provides that "/a/ majority of the board, including one officer, shall constitute a quorum." A majority of the Board would be four members. Three members do not constitute a quorum of the Board.

> The requirement that a quorum be present is jurisdictional and may not be waived and the action of less than a quorum is void. 73 C.J.S. Public Administrative Bodies and Procedures section 21 (1951).

When an action is "void" it is "/n/ull; ineffectual; nugatory; having no legal force or binding effect; unable, in law, to support the purpose for which it was intended." Black's Law Dictionary 1411 (5th ed. 1979).

4. Committee members have no authority to make motions, second motions or vote on matters involving registered nurses. Only Board members can validly make motions, second motions or vote on registered nursing matters. A motion or vote by a Committee member on a registered nursing matter might invalidate the action of the board because they are not members of the Board for that purpose. Determination of whether or not the action taken is invalid should be on a case-by-case basis.

The more important consideration in the fact situation presented is that three Board members do not constitute a quorum. Since the quorum requirement is jurisdictional any action of less than a quorum is void.

CONCLUSIONS:

1. The presence of three Board members and five Committee members constitutes a quorum for conducting business concerning practical nursing matters at a combined Board-Committee meeting.

2. Committee members do not have authority to make motions, second motions or vote on matters which may involve registered nurses or registered nurses and practical nurses.

3. The presence of three members of the Board does not constitute a quorum and any actions taken by less than a quorum are void.

4. A motion or vote by a Committee member on a registered nursing matter might invalidate the action of the Board. Determination of whether or not the action taken is invalid should be on a case-by-case basis.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX III

LEGISLATIVE COUNCIL OPINION

O-81-68

JULY 27, 1981

ARIZONA LEGISLATIVE COUNCIL

MEMO

July 27, 1981

TO: Douglas R. Norton
Auditor General

FROM: Arizona Legislative Council

RE: Request for Research and Statutory Interpretation (O-81-68)

This is in response to a request submitted on your behalf by Gerald A. Silva in a memo dated July 10, 1981. No input was received from the Attorney General concerning this request.

FACT SITUATION:

Arizona Revised Statutes (A.R.S.) section 32-1664 requests the Board of Nursing (Board) to investigate sworn complaints filed with the Board:

> A. Upon the filing with the board of a sworn complaint charging a licensee with any conduct specified in section 32-1663, subsection D, the board shall conduct an investigation thereof . . . .

If the complaint appears to be substantiated, the Board is required to hold a hearing and issue to the accused a notice which includes a copy of the sworn complaint. A.R.S. section 32-1664, subsection B states:

> B. If the investigation in the opinion of the board reveals reasonable grounds to support the charge the board shall appoint a time and place for hearing the matter and shall cause notice thereof, together with a copy of the sworn complaint, to be served on the accused personally at least twenty days prior to the time fixed for the hearing . . . .

Following a hearing, the Board may revoke or suspend the nurse's license pursuant to A.R.S. section 32-1663, subsection D and A.R.S. section 32-1664, subsection F.

The Auditor General's audit found that 1) the Board has investigated some allegations which were not filed with the Board as sworn complaints 2) the Board has filed its own sworn complaint, and 3) sworn complaints, filed by either the complainant or the Board, are not always included in the notice of hearing presented to the nurse involved in the complaint. *

In addition, the Board has ordered that some nurses, in addition to being suspended, serve a period of probation and fulfill other requirements such as participating in a drug treatment program or reporting periodically to the Board.

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* Subsequent investigation found that the above statement of condition was not factual.

QUESTIONS PRESENTED:

1. Does the Board have the authority to investigate allegations which are not originally filed as sworn complaints?

2. If not, what are the ramifications to the Board and the license holder if such investigations have been undertaken?

3. Is the Board required to include a sworn complaint in its notice of hearing served on an accused nurse, or does the inclusion of the facts in the hearing notice constitute fulfillment of the statutory requirements?

4. If required, what are the ramifications to the Board and license holder if notices do not include a sworn complaint?

5. Does the Board have authority to order a period of probation, or take other disciplinary action short of suspension or revocation of a license? Does the Board have the authority to order a period of probation following a period of suspension?

6. If not, what are the ramifications to the Board and license holder if such disciplinary action has been taken?

ANSWERS:

1. A.R.S. section 32-1606, subsection B, paragraph 3 provides that the Board shall:

> /e/xamine, license and renew the licenses of duly qualified applicants, and conduct hearings upon charges calling for suspension or revocation of a license or accreditation of schools of nursing, as provided in this chapter, and for proper cause may deny, suspend or revoke licenses or accreditation of schools of nursing. (Emphasis added.)

> "Where a statute confers powers or duties in general terms, all powers and duties incidental and necessary to make such legislation effective are included by implication." Sutherland, Statutes and Statutory Construction section 55.04 (4th ed., Sands, 1972).

The purpose of the various statutes regulating the practice of medicine in its different branches is to protect the public against those who are not properly qualified to engage in the practice of medicine. Batty v. Arizona State Dental Board, 57 Ariz. 239, 112 P.2d 870 (1941). The power to investigate allegations is incidental and necessary for the Board to be able to deny, suspend or revoke licenses and protect the public from unqualified nurses. The Board has the implied power to investigate allegations before it makes a formal charge in a sworn complaint. A sworn complaint is necessary, however, before an accused nurse is served with notice of a hearing. A.R.S. section 32-1664, subsection B. (See answer 3.)

A.R.S. section 32-1664, subsection A does not limit the power to investigate allegations to cases in which a sworn complaint has been filed with the Board. Nor does this section prohibit the Board from filing sworn complaints. A.R.S. section 32-1664, subsection A simply provides that the Board is required to investigate sworn complaints

charging a licensee with any conduct specified in A.R.S. section 32-1663, subsection D that are filed with the Board.

2. See answer 1.

3. A.R.S. section 32-1664, subsection B provides that:

> If the investigation in the opinion of the board reveals reasonable grounds to support the charge the board shall appoint a time and place for hearing the matter and shall cause notice thereof, together with a copy of the sworn complaint, to be served on the accused personally at least twenty days prior to the time fixed for the hearing. (Emphasis added.)

The use of the word "shall" in the above subsection imposes a mandatory directive on the Board to cause a copy of the sworn complaint to be served with the notice on the accused. It is an elementary principle of statutory construction that each word in a statute will be given effect. Sutherland, Statutes and Statutory Construction section 46.06 (4th ed., Sands, 1972); State v. Superior Court for Maricopa County, 113 Ariz. 248, 550 P.2d 626 (1976). The words of a statute are to be given their common meaning unless it appears from the context or otherwise that a different meaning is intended. Ross v. Industrial Commission, 112 Ariz. 253, 540 P.2d 1234 (1975).

4. The function of this office in connection with performance audits by the Auditor General is to provide legal research and statutory interpretation. It would be inappropriate for this office to apply legal principles to a question which asks what the impact of a particular administrative action would be if the result would imply the same conclusion in all cases. A subjective application of the law can only be done on a case-by-case basis and is properly left to the administrative authority in the first instance and to the courts in the second.

5. Administrative agencies have no common law or inherent powers. Their powers are to be measured by the statutes under which they operate. Kendall v. Malcolm, 98 Ariz. 329, 404 P.2d 414 (1965).

A.R.S. section 32-1664, subsection F provides that "/i/f the accused is found guilty by the board of any of the actions set forth in section 32-1663, subsection D, the board may revoke or suspend the license." (Emphasis added.) See also A.R.S. section 32-1606, subsection B, paragraph 3. The Board only has authority to revoke or suspend the license of an accused nurse who is found guilty of any of the actions set forth in A.R.S. section 32-1663, subsection D. The Board does not have authority to order a period of probation or take other disciplinary action short of suspension or revocation of a license if the accused is found guilty of any of the actions set forth in A.R.S. section 32-1663, subsection D.

The Board has more discretion in reissuing suspended or revoked licenses. A.R.S. section 32-1664, subsection G provides that "/a/ denied license may be issued and a revoked or suspended license may be reissued after the denial, revocation or suspension in the discretion of the board."

A.R.S. section 32-1606, subsection A provides that "/t/he board may adopt and revise rules and regulations necessary to carry into effect the provisions of this chapter." The Board has adopted a rule regarding reinstatement of licenses. Arizona Code of Administrative Rules and Regulations (A.C.R.R.) R4-19-45 provides that:

> A. A nurse whose license to practice nursing has been suspended for a period of time shall automatically be reinstated at termination of the period of suspension as established by the Board if the stipulations in the order have been met.
>
> B. A nurse whose license to practice nursing has been denied or revoked, may make application to the Board after a period of two years for the issuance of a denied license or reissuance of a revoked license under the following terms and conditions:
>
> 1. An application shall be submitted in writing, verified under oath, and shall contain therein or have attached thereto substantial evidence that the basis for denial or revocation has been removed and that the issuance of a license will no longer constitute a threat to the public health or safety.
>
> 2. The Board shall consider the application and may designate a time for the applicant to appear at a regularly scheduled meeting of the Board so that evidence of qualification and competency to practice can be presented.
>
> 3. After reviewing the evidence and deliberating the matter, the Board may grant the applicant a temporary permit to practice for a time period specified, or the Board may deny the application.
>
> 4. The Board may require that the applicant complete a specified period of supervised practice. On completion of the supervised practice period, the Board will consider the evaluation of the applicant's performance. In narcotic cases, the Board may require periodic psychological or psychiatric evaluations and reports, urinalysis, and affidavits concerning narcotic use. These conditions must be met before an application is considered.

The Board may require that an applicant for issuance of a denied license or reissuance of a revoked license complete a specified period of supervised practice before an application is considered. A.C.R.R. R4-19-45, subsection B, paragraph 4. Under this rule, the Board may also require participation in a drug treatment program and periodic reports to the Board. The rule does not specifically provide that the Board may require similar terms and conditions for reinstating suspended nurses. Rather A.C.R.R. R4-19-45, subsection A provides that if the suspended nurse has met the stipulations in the order of suspension reinstatement is automatic at the termination of the period of suspension. Stipulations (conditions for reinstatement) in suspension orders may include satisfactory completion of a period of supervised practice.

6. See answer 4.

CONCLUSIONS:

1. The Board has the implied authority to investigate allegations which are not originally filed as sworn complaints.

2. See answer 1.

3. The Board is required to include a sworn complaint in its notice of hearing served on the accused nurse.

4. It is not appropriate for this office to answer this question for the reasons set forth above.

5. The Board only has authority to revoke or suspend the license of an accused nurse who is found guilty of any of the actions set forth in A.R.S. section 32-1663, subsection D. The Board has more discretion in reinstating suspended licenses and reissuing revoked licenses. The Board may require that certain conditions be met before a suspended license is reinstated or a revoked license is reissued.

6. See answer 4.

cc: Gerald A. Silva
Performance Audit Manager

APPENDIX IV

PRELIMINARY RECOMMENDATIONS:
1981 NURSING MANPOWER STUDY

ARIZONA NURSING MANPOWER ADVISORY COUNCIL

PRELIMINARY RECOMMENDATIONS

from

THE 1981 NURSING MANPOWER STUDY

INTRODUCTION

The 1980 labor force participation rate of Arizona nurses indicates that an additional 1,711 RN's are needed to fill the 1,272 full-time employee positions reported to be vacant. This represents an 8.3 percent increase over the current supply of nurses. Changes in wages, working conditions, and public policies might attract up to 1,860 RN's and 450 LPN's back to the work force who are currently not working, thus, eliminating the current 'shortage of nurses.'

Unless current trends and practices are changed however, it is projected that by 1985, Arizona will experience a shortage of between 2,000 to 2,500 RN's or about 12 percent of the supply. The projected 1990 shortfall is estimated to be between 2,500 and 4,150 RN's, or 13 to 18 percent of the supply.

Based on these projections, it is important that Arizona implement actions now which will prevent a severe shortage of nursing personnel in this decade. It is for this reason that preliminary recommendations are presented for review and comment. These and other pertinent recommendations for action will be compiled and finalized for publication by September 1981.

RECOMMENDATION 1.

CREATION OF A STATEWIDE COUNCIL ON NURSING IN ARIZONA

That the Governor of Arizona

1. Establish a permanent Council on Nursing charged with responsibility and authority to:

   a. identify methods for implementing the recommendations of the Arizona Nursing Manpower Advisory Council;

   b. identify current actions and outcomes needed to meet the supply/demand for nursing services in Arizona; and,

   c. develop long range plans which will ensure Arizonans access to nursing services and nursing education.

2. Continue to include nurses on councils, boards, committees, task forces, and advisory bodies which are charged to plan, organize, and implement health care services.

That the Arizona Legislature

1. Provide funding for the Governor's Council on Nursing charged with responsibility and authority to:

   a. identify methods for implementing the recommendations of the Arizona Nursing Manpower Advisory Council;

   b. identify current actions and outcomes needed to meet the supply/demand for nursing services in Arizona; and,

   c. develop long range plans which will ensure Arizonans access to nursing services and nursing education.

2. Continue to include nurses on council, boards, committees, task forces, and advisory bodies which are charged to plan, organize, and implement health care services.

RECOMMENDATION 2.

IMPLEMENT CHANGES IN RECRUITMENT, RETENTION, UTILIZATION AND WORK ENVIRONMENT FOR NURSES IN ARIZONA

That Arizona Employers of Nurses

1. Evaluate the components of the quality of work-life that have been identified as impacting upon recruitment, retention, and job satisfaction; and, commit to changes to:

   a. assure that salary/benefit structure is competitive with comparable professions and commensurate with responsibilities, with consideration given to educational preparation and professional experience.

   b. create an environment which fosters professional nursing practice including concepts of collaborative practice, career ladders, and primary nursing;

   c. incorporate concepts and practices which foster participation in decisions affecting the individual, the professional and work environment, and patient care;

   d. examine the factors impacting upon demand, i.e., staffing patterns, utilization and efficiency, specialization, primary nursing, patient classification systems, and the swing bed concept.

That Nursing Service and Nursing Education

1. Create joint committees to review curricula, competencies of graduates, and working environment, in order to achieve a congruence between expectations of nursing service and education for the preparation and utilization of nurses.

2. Survey recent graduates and their employers to evaluate the transition from student to practicing nurse and plan improvements in the transition process by making specific recommendations based on an analysis of the survey findings.

3. Expand affiliation agreements between nursing homes and schools of nursing for student learning experiences.

RECOMMENDATION 2. (Continued)

That Medical and Nursing Staff

1. Form collaborative practice committees to create an environment which fosters better utilization of professional nurses in order to maximize the quality of care to the patient/consumer.

That Arizona nurses' associations and organizations

Arizona schools of nursing

Arizona employers of nurses

Arizona medical associations and organizations

Arizona governmental agencies, and

Arizona State Board of Nursing

1. Collaborate in developing and implementing strategies for the recruitment and retention of students and nurses in both educational and employment settings.

2. Continue to include nurses on councils, boards, committees, task forces, and advisory bodies which are charged to plan, organize, and implement health care services.

RECOMMENDATION 3.

EXPAND WHAT THE PUBLIC KNOWS OF AND EXPECTS FROM PROFESSIONAL NURSES IN ARIZONA

That Arizona nurses' associations and organizations

Arizona schools of nursing

Arizona employers of nurses

Arizona medical associations and organizations

Arizona governmental agencies, and

Arizona State Board of Nursing

1. Collaborate in a long-term effort to inform the public of nursing as a profession and how the practice of nursing impacts upon the delivery of health care.

RECOMMENDATION 4.

IMPROVE THE ARTICULATION BETWEEN LPN, DIPLOMA, ADN AND BSN NURSING PROGRAMS IN ARIZONA

That the Arizona Board of Regents

1. Provide opportunities for lifelong educational development of registered nurses in Arizona by offering appropriate credit and non-credit courses, statewide, when economically feasible.

2. Facilitate the continuing development of effective articulation between ADN/Diploma and baccalaureate nursing degree programs.

3. Disseminate current information concerning the mechanism for articulation between programs.

That the State Board of Directors for Community Colleges

1. Facilitate the continuing development of effective articulation between LPN and ADN programs and between ADN and baccalaureate degree programs.

2. Disseminate current information concerning the mechanism for articulation between programs.

RECOMMENDATION 5.

IMPROVE ARIZONA'S ABILITY TO PLAN FOR MEETING ITS HEALTH CARE NEEDS

That the Arizona State Board of Nursing

1. Improve the availability of data which reflects nursing supply and demand, and insure that data is available in a manner which permits ongoing planning for nursing manpower.

2. Enhance the compatability of Arizona RN and LPN data to allow the exchange of information (with emerging state and regional data collection systems) as appropriate.

3. Compile annual data from Arizona schools of nursing on the numbers of applicants, admissions and graduates to facilitate planning for Arizona nursing manpower.

That the Arizona Department of Health Services

1. Continue to facilitate the development of patient discharge data (reflecting seasonal population trends) which will assist in ongoing planning for nursing manpower.

2. Consider the supply of nursing personnel as a component in the review of Certificate of Need applications.

That Health Planning Activities

1. Continue to include nurses on councils, boards, committees, task forces, and advisory bodies which are charged to plan, organize and implement health care services.