BACKGROUND PAPER F OR THE BOARD OF REGISTERED NURSING

BOARD RESPONSES TO IDENTIFIED ISSUES AND STAFF RECOMMENDATIONS

Joint Sunset Review Oversight Hearing, March 18, 2022
Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions

On Friday, March 18, 2022, the Assembly Business and Professions Committee and the Senate Business, Professions, and Economic Development Committee held a joint sunset review oversight hearing for the Board of Registered Nursing (BRN). In connection with the hearing, legislative staff posted a Background Paper, which posed issues and questions for the Board. Below are the BRN's responses to these issues and questions.

This document was reviewed and approved by the Board of Registered Nursing on Thursday, March 24, 2022.

BUDGET ISSUES

ISSUE #1: FEE AUDIT. ***The BRN's 2019 fee audit recommended fee amounts for functions that have workload but are not associated with a fee. However, the BRN currently operates at a surplus and recently made two General Fund loans totaling more than $32 million. Should the BRN be authorized to establish the new fees?***

Staff Recommendation: *The BRN should discuss whether other boards have similar fees, whether the fees are equitably applied between applicant types, and whether the fees are currently necessary. If seeking legislation upon board approval to do so, the BRN should complete and submit the Committee's fee bill questionnaire at the time of the request.*

BRN Response and Action

Prior to making changes to fees, the BRN will research whether other boards have similar fees in the nine categories discussed in the 2020 Sunset Report. However, the BRN supports the establishment of the fee ranges for the nine new categories, as staff time and workload are currently being impacted and/or cannot commence without such fees. Since the 2020 Sunset Report, the BRN partnered with the Department of Consumer Affairs' (DCA) Fiscal Office to conduct desk audits of the various activities and pursue the necessary regulatory changes.

ISSUE #2: ATTORNEY GENERAL BILLING RATE. ***In 2019, the Attorney General suddenly and significantly increased its billing rate for all DCA licensing boards in disciplinary matters. Will the cost pressures generated by the increase create difficulties for the BRN's fund?***

Staff Recommendation: *The BRN should discuss the impact of the Attorney General's rate increase and whether any action is needed by the Administration or the Legislature to safeguard the health of its special fund.*

BRN Response and Action

The Attorney General's Office (AGO) raised the costs charged to the BRN for representing the BRN in connection with discipline and enforcement matters. The BRN will continue to monitor any impact from the increase in the AGO billing rate to ensure there is no negative impact to the Board of Registered Nursing Fund.

TOTAL EXPENDITURES	
FY 2018/2019	6,887,843
FY 2019/2020	9,428,655
FY 2020/2021	9,112,770
FY 2021/2022 (as of Jan. 2022)	3,969,812

ADMINISTRATIVE ISSUES

ISSUE #3: LICENSING VS. PROMOTION OF THE PROFESSION. ***The long-standing policy of the Committees is that the purpose of licensing is to protect consumers through the least restrictive means, not to guarantee the highest quality practitioners. Are the BRN's mission and actions consistent with this policy?***

Staff Recommendation: *The BRN should discuss why its primary mission is to protect the public by ensuring the highest quality of RNs, rather than to protect the public through the objective regulation of the profession.*

BRN Response and Action

The BRN believes that its actions are consistent with the policy of protecting consumers through the least restrictive means of regulation. The BRN completed its Strategic Plan for 2022-2025[1], and through the development of this Strategic Plan, the BRN updated its mission statement to reflect that the Board's mission is to protect the health, safety, and well-being of the public through the fair and consistent application of the statutes and regulations governing nursing practice and education in California.

[1] https://www.rn.ca.gov/pdfs/consumers/stratplan22-25.pdf

ISSUE #4: EXECUTIVE OFFICER REQUIREMENTS. ***The Nursing Practice Act is the only licensing law in California that requires the executive officer to be a licensee. Why is this requirement necessary?***

Staff Recommendation: *The BRN should discuss the distinctions between the administration of the BRN and the other healing arts boards that necessitates the requirement of an RN executive officer.*

BRN Response and Action

The BRN has 237.1 positions; of those, 18 positions require licensure as an RN. The expertise of a licensed practitioner in the role of the BRN Executive Officer is extremely beneficial to understanding the intricacies of the issues inherent in regulating the nursing profession. The BRN's Assistant Executive Officer position does not have a requirement to be a registered nurse (RN). This allows for an executive-level position without the requirement of an RN license to provide input on the objective regulation of the nursing profession. Additionally, the composition of the nine-member Board includes five RNs and four public members. All Executive Leadership[2] and BRN staff[3] have access to the Board and DCA to communicate any issues or concerns that may arise. Finally, based on other United States state/territory boards of nursing (BONs) websites and the National Council of State Boards of Nursing (NCSBN) Board Profiles,[4] 41 out of the 55 United Stated BONs, have an RN in an executive decision-making role.

ISSUE #5: PRIOR SEXUAL HARASSMENT AND MISCONDUCT ALLEGATIONS. ***What was the outcome of the investigation into the prior executive officer?***

Staff Recommendation: *The BRN should provide any available updates, including whether any recommendations for change were suggested or adopted.*

BRN Response and Action

The investigation of the prior sexual harassment and misconduct allegations was completed, and the Board took appropriate actions based on the findings in the investigation. The BRN is committed to ensuring that it operates a workplace that is free from all forms of harassment and discrimination. To further this commitment and the process of ongoing culture change, in February 2021, all BRN supervisors and managers took part in training that included prevention of harassment and discrimination.

ISSUE #6: WHISTLEBLOWER AUDIT. ***A whistleblower revealed that the prior BRN executives falsified data sent to the State Auditor to meet a 2016 audit recommendation. While recommendations 1 and 2 from the audit have been implemented, what is the status of recommendation 3? What is the result of the following DCA internal audit?***

Staff Recommendation: *The BRN should update the Committees on its progress in implementing the State Auditor's recommendations and continue to work with the State Auditor on full implementation.*

[2] https://www.rn.ca.gov/consumers/execleadership.shtml
[3] https://www.rn.ca.gov/staff.shtml
[4] https://www.ncsbn.org/contact-bon.htm

BRN Response and Action
Recommendation #3 states that, within 90 days, the BRN should work with the audit team to develop a satisfactory approach for fully implementing the 2016 audit recommendation. The BRN provided its response to that recommendation to the California State Auditor (CSA), indicating that the investigators' assignments will not exceed 30 cases. All three recommendations for the CSA Investigative Report 12020-0027 are fully implemented and reflected as such on the CSA website. On DCA's review, implementation of recommendations was confirmed.

ISSUE #7: NEC RECRUITMENT AND RETENTION. ***The BRN reports that it continues to have difficulty recruiting and retaining NECs due to the non-competitive salary. What changes are necessary to improve recruitment and retention?***

Staff Recommendation: *The BRN should discuss its current efforts to work with the DCA and State Personnel Board, and whether it is exploring additional avenues to address the NEC recruitment and retention issue.*

BRN Response and Action
The Nursing Education Consultants (NECs) work at a high level and should be compensated at a level commensurate with their nursing expertise and experience. Due to the relatively low NEC/Supervising Nursing Education Consultant (SNEC) salary compared to other RN positions within state service (as discussed in the 2020 BRN Sunset Report, Issue 12.2) the BRN conducts targeted outreach to the California Organization of Associate Degree Nursing (COADN) and the California Association of Colleges of Nursing (CACN), holds NEC job postings open until filled, and when appropriate, requests authorization to hire above the minimum (HAM). If the HAM is approved, the salary of the NEC/SNEC applicant still could be lower than other RN positions within state service.

Additionally, as the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) mentioned in their 2020 Sunset Report response paper:

> [T]he current maximum salary for the NEC is approximately $105,600 before benefits. In 2018, a high-level nursing program director at a community college made approximately $132,800 before benefits. Directors of Nursing for private nursing programs can earn upwards of $150,000 before benefits. These tend to be the strongest candidates for NECs, but the BRN and BVNPT can't compete with the salaries offered at the community college level, let alone private industry.

Civil service employees in California state government are subject to the collective bargaining process for negotiating wages, hours, and other terms and conditions of employment. The unions negotiate directly with the state employer, represented by the California Department of Human Resources (CalHR). Although this is up to union labor negotiations with SEIU Unit 21 local 1000, the BRN will continue to work collaboratively with DCA to recommend that CalHR increase the NEC and SNEC salaries to be in alignment with other equivalent positions in state service. The last request DCA submitted to CalHR on behalf of the BRN to increase the salary was in 2019. However, the request was not granted, and CalHR maintains that the bargaining process is confidential; therefore, no reason(s) was provided to DCA.

The BRN will continue to advocate for the NEC and SNEC salaries to be competitive as this will assist the BRN with recruitment and retention of qualified NECs/SNECs to perform the duties necessary to carry out the Board's mission.

Position Information	Assignment Areas				Total
	Northern	Southern	Enforcement	CE & Research	
SNEC Positions	1	1	N/A	1	3
Filled	1	0	N/A	0	1
Vacancies	0	1	N/A	1	2
% Vacancy Rate	0%	100%	N/A	100%	66%
NEC Positions	4	7	2	1	14
Filled	3	4	1	0	8
Vacancies	1	3	1	1	6
% Vacancy Rate	25%	42%	50%	100%	42%

ISSUE #8: CONSUMER SATISFACTION. ***Consumer satisfaction with the BRN is low, particularly in areas related to complaints, endorsements, and consumer contact. What can be done to improve consumer satisfaction, and are there ways to improve the utility of consumer surveys?***

Staff Recommendation: *The BRN should discuss what specific steps, other than the augmentation of staff, it is taking to address the low levels of consumer satisfaction. It should also discuss its survey development process, and what the comprehensive analysis of the surveys has revealed so far.*

BRN Response and Action

The BRN has taken multiple steps to address the low level of consumer satisfaction. An example of a significant consumer concern was contacting the BRN. To address this concern, on March 16, 2021, the BRN deployed phase one of its new phone system which has modern features such as a call back option, notification of placement in queue, and improved access to other program areas within the BRN. Additionally, the BRN added contact information for executive leadership and management to the website. The BRN also streamlined licensing processes, as further discussed in the responses for Issues #9 and #11 below, which has helped to reduce the need for some individuals to call the BRN.

The initial 2019-2020 consumer satisfaction survey was developed by the prior BRN leadership and uses a Likert 1-5 scale for the functional areas. The BRN analyzed the survey results by combining the quantitative levels of satisfaction with the qualitative comments in each functional area and compared changes from year to year. An analysis of this survey identified the following overarching themes of consumer concern: contacting the BRN, licensing processing timeframes, and the utilization of BreEZe. The BRN will continue its efforts to streamline processes to improve consumer satisfaction.

ISSUE #9: LICENSING TIMELINES AND RESPONSIVENESS. *The Committees have received a steady stream of complaints from applicants about lack of responsiveness and extended processing timelines. What prevents the BRN from responding in a timely manner, and can the target timeframes be shortened?*

Staff Recommendation: *The BRN should discuss its progress on updating its internal licensing processing target timelines and reducing errors in the application process.*

BRN Response and Action

California Code of Regulations (CCR), title 16[5], section 1410.1 allows the BRN 90 days to inform an applicant that their application is either complete and accepted for filing or that it is deficient and to explain what is required to complete the application. However, BRN's goal is to process applications as quickly as possible. Therefore, the BRN has been working towards conducting initial evaluations of RN applications by exam within 30 days and endorsement within 60 days, as well as streamlining its business processes to improve the overall application process.

To improve processing timelines and reduce errors, the BRN, in collaboration with DCA, contracted with a consultant for specific IT and BreEZe system enhancements. Additionally, the BRN volunteered to be the first board within DCA to participate in the DCA Enlighten Licensing Project. This project brings together licensing and IT subject matter experts from DCA boards and bureaus to identify ways to streamline BRN's licensing processes, both internally and externally, for greater efficiencies.

Additionally, as discussed in the 2022 BRN Sunset Report, Section 2, based on input from staff recommendations, DCA Enlighten Licensing Project, and stakeholder feedback, the BRN made the following major updates and/or efficiencies:

- On June 7, 2021, through collaboration with DCA, the BRN launched the Application Status and Details webpage on the BRN's website. This new webpage provides applicants and licensees with detailed information and the progression of their initial and renewal applications, including any items that are deficient.
- In July 2021, the BRN removed the requirement for the submission of a passport-like photo from the applicant as a means of establishing identity. The requirement previously resulted in a high number of deficiencies and inquiries to the BRN. A photo is included with the NCLEX results received by the Board and maintained in the applicant's licensure record as a means of establishing identity. Additionally, the BRN removed the requirement for the submission of duplicate transcripts and other documentation for reapply/repeat examination applications, which is expected to allow for reduced processing timeframes.
- In October 2021, in collaboration with DCA and a contracted IT vendor, the BRN implemented a new secure education history portal available to the California Board-approved prelicensure nursing programs. The new portal will be used by the Board-approved Director of Nursing (DON) to query a report of all applicants for initial licensure by examination located in BreEZe based on their assigned school code. Once the DON

[5] All references to "CCR" are to title 16 of the California Code of Regulations.

verifies that the applicant completed the educational requirements for licensure through that approved program, the DON will enter the student's completion and/or graduation information and will electronically submit that information to the BRN. Upon submission, the verified data will be uploaded into BreEZe, which will issue exam eligibility to the applicants and transmit that to Pearson Vue, the exam vendor who will issue the Authorization to Test (ATT). This process eliminates the need for submission of individual school transcripts and expedites this process. This allows students to schedule their NCLEX date sooner than in the past. In general, the earlier a graduate takes the NCLEX after completing a nursing program, the higher the likelihood of successfully passing the exam.

- On March 10, 2022, in collaboration with NCSBN, the BRN implemented NURSYS® to provide the license verification service for RNs licensed in California as further discussed in the responses for Issue #11 below.
- On March 24, 2022, in collaboration with DCA, the BRN implemented a BreEZe update that associates the faculty approval (teaching credential) to the RN's license which is accessible on the DCA's License Search Page. This change will require that the BRN NEC only approve the faculty one time unless additional leveling or content areas are added.

For the next year, BRN's primary focus for business improvements will include, but not be limited to, the following enhancements:

- Updating the education history portal to make it available to the California Board-approved advanced practice nursing programs (Nurse Practitioner (NP), Certified Nurse Midwives (CNM) and Public Health Nurse).
- Automation of various functions (e.g., all payments accepted online; linking applications/licenses to share information and documentation; email notifications of licensing activity and deficiency reminders; and applicant/licensee access to required documents/forms).
- An online portal for Facility Approvals which will populate a database for purposes of comparing BRN data with the California Department of Health Care Access and Information's (HCAI) (formerly known as the Office of Statewide Health Planning and Development) list of health care facilities to identify additional facilities that may offer clinical placement slots.

In addition to the IT and business process improvements, staff training was updated, expanded, and is ongoing. This training protocol provides staff with a full understanding of licensing processes and the tools for processing applications appropriately and consistently. As an example of the expanded training, in October 2021 and January 2022, staff in the Public Information Unit completed a training program which enables them to complete some licensing processes to assist callers immediately. Furthermore, BRN will continue to solicit input from staff regarding business processes to eliminate unnecessary steps and barriers and improve efficiency.

ISSUE #10: LICENSE RECIPROCITY. ***The Nursing Practice Act allows licensees from other states to apply for a CA license via endorsement of their existing license, but it can be a lengthy process that involves a rigorous review of education, background, and other requirements. What are the unique CA standards that other state licenses do not meet?***

Staff Recommendation: *The BRN should discuss possible options for improving reciprocity, such as streamlining its endorsement process or other available solutions, and discuss any licensing requirements that reduce the feasibility of reciprocity.*

BRN Response and Action

According to NCSBN data, nurses are the second largest group of licenses professionals in the United States. California has the highest number of nurses in the United States, having 9.36 percent of the total number of nurses in the United States. (7.61 percent RN and 1.75 percent Licensed Vocational Nurses (LVNs)). California is followed by New York at 7.89 percent (RNs and LVNs combined) and Texas at 7.70 percent (RNs and LVNs combined) of the total number of nurses in the United States. Each state or territory has a Nurse Practice Act (NPA)[6] that identifies how nursing is regulated, sets requirements for licensing, and defines scope of nursing practice within that jurisdiction. The BRN is currently researching requirements for licensing in all states and territories within NCSBN and will share this information with the Legislature.

The Nurse Licensure Compact (NLC) allows a nurse to work temporarily in or commute to other compact states as long as the nurse remains a resident in the issuing state. The NLC allows for existing facility staff to be augmented by nurses on temporary assignment who can work in multiple states. With the NLC, nurses must establish residency and apply for licensure by endorsement in the Primary State of Residence (PSOR). The PSOR (also known as the home state) is the state where a nurse declares a primary residence for legal purposes. Only one state can be identified as the primary state of legal residence for NLC purposes.

The chart below summarizes the NCSBN NLC moving scenario factsheet[7], which explains that under any scenario, if a nurse is changing their PSOR, they must apply for licensure by endorsement in their new primary state of residency:

Moving from a noncompact state to an NLC state	The nurse is responsible for applying for licensure by endorsement in the new state of residence. The nurse may apply before or after the move. A multistate license may be issued if residency and eligibility requirements are met. If the nurse holds a single state license issued by the noncompact state, it is not affected.
Moving from an NLC state to a noncompact state	The nurse is responsible for applying for licensure by endorsement in the new state of residence. The nurse may apply before or after the move. The multistate license of the former NLC state is changed to a single state license upon changing legal residency to a noncompact state. The nurse is responsible for notifying the board of nursing (BON) of the former NLC state of the new address.

[6] https://www.ncsbn.org/Nursing_Licensure.pdf
[7] https://www.ncsbn.org/2018_Moving_Scenarios_Factsheet.pdf

Moving from an NLC state to another NLC state	When moving (changing primary state of legal residence) to a new NLC state, it is the nurse's responsibility to apply for licensure by endorsement. This should be completed upon moving and the nurse should not delay. There is no grace period. The nurse may not wait until the former license expires to apply in the nurse's new state of legal residency. The nurse may practice on the former home state license only UNTIL the multistate license in the new NLC home state is issued. Proof of residency such as a driver's license may be required. Upon issuance of a new multistate license, the former license is inactivated

Even with the NLC, the BRN would need to address the licensing by endorsement process for nurses who want to make California their PSOR. Additionally, the BRN would have to address the licensing verification process for nurses who want to establish a new PSOR. To assist with RNs moving from state to state quickly and efficiently, irrespective of NLC, the BRN has started and will continue to improve licensing processes for both the endorsement applications as well as verifications.

The BRN's processing time for initial review of the endorsement application (RN coming to California) is about 60 days. The BRN will issue a license at the time of initial review if there are no application deficiencies, including but not limited to transcripts and fingerprints. To further improve the overall processing times, the BRN updated the endorsement application review process to prioritize applications where the fingerprint response is received.

Fingerprint images can be transmitted two ways: either through Live Scan for applicants in California, or "hard cards" for those applicants outside of California and those who are not able to complete the Live Scan process. Receiving fingerprint results from the hard card process can take 8-12 weeks or longer. For either process, factors including but not limited to poor fingerprint quality and transaction errors can cause delays/rejects from the California Department of Justice, thereby delaying the final determination of the endorsement application for licensure.

Additionally, the BRN is considering revising its licensing process for the review of education of endorsement applicants to align with the Code of Federal Regulations, title 34, section 668.43, subdivision (a)(5)(v), which became effective in July 2020 and states:

> Institutional information that the institution must make readily available to enrolled and prospective students under this subpart includes, but is not limited to [¶] … The academic program of the institution, including [¶] … If an educational program is designed to meet educational requirements for a specific professional license or certification that is required for employment in an occupation, or is advertised as meeting such requirements, information regarding whether completion of that program would be sufficient to meet licensure requirements in a State for that occupation, including -
>
> > (A) A list of all States for which the institution has determined that its curriculum meets the State educational requirements for licensure or certification;

(B) A list of all States for which the institution has determined that its curriculum does not meet the State educational requirements for licensure or certification; and
(C) A list of all States for which the institution has not made a determination that its curriculum meets the State educational requirements for licensure or certification.

Specifically, this federal regulation requires the nursing program to provide a list of all states/jurisdictions where the institution's curriculum meets state educational requirements for professional licensure or certification. The BRN is researching opportunities to automate, in part or in whole, the endorsement application process based on this federal regulation. Additionally, the BRN will continue to monitor NCSBN models and report findings to the Board, as appropriate.

Maintaining an enhanced endorsement process will ensure that RNs coming into California have the same educational preparedness and understand the scope of practice that is specific to California, thereby reducing the opportunities for errors and operating outside of that scope. Furthermore, the NPA requires a minimum of 30 continuing education hours with renewal which helps RNs stay current and aware of medical advances, updated procedures and treatments, and new diagnoses such as COVID-19.

Another public safety issue is enforcement and discipline. When RNs are licensed in California, they fall under the jurisdiction of the BRN, which allows the BRN to receive subsequent arrest and/or conviction information. This ensures that the BRN can take immediate action on that license for public protection without necessarily having to coordinate with other states, which can cause delays.

By improving these processes, the BRN can offer a more efficient endorsement and verification process (further discussed in the response for Issue #11), thereby allowing movement of RNs across state lines and ensuring access to high quality, competent RNs in the California workforce.

ISSUE #11: CA LICENSE PORTABILITY. ***Licensed CA RNs that wish to practice out of state must endorse to other states' nursing boards through the BRN, which can be costly and time-consuming. How can the out-of-state endorsement process be improved?***

Staff Recommendation: *The BRN should update the Committees on its progress in implementing the changes proposed and whether there are further solutions to improve the portability of CA licenses.*

BRN Response and Action

On March 10, 2022, the BRN implemented the use of Nursys® for license verification requests previously completed by the BRN.[8] Nursys® provides online verification for endorsement to a nurse requesting to practice in another state and anyone who wants to verify a nurse license.

[8] https://mailchi.mp/ncsbn/california-board-of-registered-nursing-joins-nursys-electronic-license-verification?e=f06db8ea9c

The BRN will allow verification requests to be made through a licensee's BreEZe account for out-of-country license verifications and it is anticipated that this option will be renamed in BreEZe by the end of the Fiscal Year (FY).

ISSUE #12: IMPLEMENTATION OF RECENT LEGISLATION IMPACTING ADVANCED PRACTICE NURSES. ***In 2020, the Legislature passed two bills that the Governor signed into law clarifying independent practice authority for advanced practice nurses. Specifically, AB 890 paved the way for NPs to practice independently while SB 1237 established parameters for CNM independence. While BRN is implementing both measures, code cleanup is necessary to fully achieve the intent of both measures.***

Staff Recommendation: *The Committees may wish to amend the Act to ensure that AB 890 and SB 1237 can be properly implemented. The BRN should provide an update on the implementation of these measures.*

BRN Response and Action

The establishment of the advisory committees as a result of the new legislation, the Nurse Practitioner Advisory Committee (NPAC) and the Nurse-Midwifery Advisory Committee (NMAC), was completed in early 2021. During 2021, NMAC held three meetings and NPAC held seven, including two interested parties' meetings. Additionally, regulation packages have been initiated in response to Assembly Bill (AB) 890 DCA's Office of Professional Examination Services (OPES) also held workshops with NP subject matter experts this past fall/winter. OPES is currently in the process of finalizing the occupational analysis. Implementation plans for AB 890[9] and Senate Bill (SB) 1237[10] can be found on the BRN website.

ISSUE #13: FURNISHING VS. PRESCRIBING. ***The BRN has requested replacing the term "furnishing" with "prescriptive authority." What is the necessity for this change and is the change appropriate?***

Staff Recommendation: *The BRN should discuss the benefits of making the statutory changes to the terms in light of the existing cross-references and definitions that accomplish the same goal.*

BRN Response and Action

Although there is a cross-reference and definitions within the Nursing Practice Act (NPA), these do not yield the clarity needed for patient safety. California is the only state using the term "furnishing" which is often misunderstood. It has been and continues to be a barrier to care in some instances, with some pharmacists or pharmacy drug stores refusing to fill furnishing transmittal orders because they do not say "prescription." Amending the terms "furnishing or ordering drugs or devices" in BPC section 2746.51 for CNMs and section 2836.1 for NPs to "prescribing drugs or devices" will minimize confusion, reduce delays, and will be consistent with language nationwide.

[9] https://www.rn.ca.gov/pdfs/meetings/brd/ab890plan.pdf
[10] https://www.rn.ca.gov/pdfs/meetings/brd/sb1237plan.pdf

ISSUE #14: APRN REPRESENTATION. ***Given the new Nurse-Midwifery Advisory Committee (NMAC) and Nurse Practitioner Advisory Committee (NPAC) established pursuant to SB 1237 (Dodd) and AB 890 (Wood), the role of the APRN Advisory Committee (APRNAC) is likely to change. Should the APRNAC be maintained, and if so, in what fashion?***

Staff Recommendation: *The BRN should provide an update on its plans and goals for the APRNAC going forward.*

BRN Response and Action

With the implementation of the NMAC and NPAC, the goals and structure of the Advanced Practice Registered Nursing Advisory Committee (APRNAC) was revised. To ensure equitable representation of all Advanced Practice Registered Nurses (APRNs), in August 2021, the Board voted to maintain the APRNAC with focus on Certified Registered Nurse Anesthetists, Clinical Nurse Specialists, and issues that affect multiple APRN groups.

ISSUE #15 PHISHING SCAMS. ***RN Licensees are being specifically targeted by scammers. Are there steps that can be taken to help address the issue?***

Staff Recommendation: *The BRN should discuss what steps it has taken to inform licensees and any additional solutions it is considering going forward.*

BRN Response and Action

When phishing scams are reported, the BRN posts alerts to the BRN website and posts information about the phishing scam on its social media platforms. The BRN will continue this process moving forward and will also send emails to the BRN ListServ alerting licensees and other stakeholders about the phishing scam.

ISSUE #16: INDEPENDENT CONTRACTORS. ***Does the new test for determining employment status, as prescribed in the court decision Dynamex Operations West Inc. v. Superior Court, have any unresolved implications for BRN licensees working as independent contractors?***

Staff Recommendation: *The BRN should inform the committees of any discussions it has had about the Dynamex decision and AB 5, and whether there is potential to impact the current landscape of the profession unless an exemption is provided.*

BRN Response and Action

AB 5 (Gonzalez, Chapter 296, Statutes of 2019) codified and expanded the use of the "ABC test" that was adopted by the California Supreme Court in *Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, to govern private employment relationships between employers, employees, and independent contractors. AB 5 requires the application of the ABC Test to determine if workers in California are employees or independent contractors for purposes of the Labor Code, the Unemployment Insurance Code, and the Industrial Welfare Commission wage orders, and it generally governs the labor, wage, benefit, unemployment insurance, and workers compensation insurance relationships between and among these entities and individuals.

In general, the BRN does not regulate the private business and employment practices of registered nurses and their employers and, as a result, AB 5 would not appear to have a significant impact on the BRN's regulatory oversight of the practice of nursing. Instead, the Employment Development Department and the Department of Industrial Relations are responsible for interpreting and implementing the new law.

Nonetheless, some BRN licensees may not qualify for independent contractor status under AB 5, primarily due to the second requirement of the test that an independent contractor "performs work that is outside the usual course of the hiring entity's business," and a determination such as this could in some cases affect their employment status with their employer.

BRN did not take a position on AB 5, but on August 15, 2019, its Legislative Committee recommended that the Board watch the bill, due to its potential impact on the profession. BRN's APRNAC discussed AB 5 during committee meetings on February 20, 2020, and August 27, 2020. The APRNAC discussed possible issues relating to access to care and healthcare costs associated with any changes in nursing employment relationships, particularly in healthcare facilities in rural and underserved urban communities, which often relied on independent contractor APRNs to meet the needs of their patients. The APRNAC discussed that, in some underserved areas, healthcare facilities might be unable to recruit practitioners on a full-time basis, either due to limited funding, limited patient needs, or a limited supply of licensed professionals residing in those areas. In such communities, nurses may have been able to fill that need by providing services on a part-time basis as an independent contractor, sometimes working in multiple facilities. Such arrangements may not be possible under AB 5.

In addition, public commentators have stated that some licensees preferred working as an independent contractor due to the flexibility and the potential for higher earnings, and that under the new rules, some practitioners (and even staffing agencies) have left California to practice elsewhere. BRN also received input from stakeholders and industry associations that advised of negative consequences for its licensees and for consumers' access to care.

ISSUE #17: FAIR CHANCE LICENSING ACT. *What is the status of the BRN's implementation of AB 2138 (Chiu/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Fair Chance Licensing Act?*

Staff Recommendation: *The BRN should provide an update on its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.*

BRN Response and Action

The regulations associated with the Fair Chance Licensing Act were approved and became effective on May 21, 2021.

EDUCATION ISSUES

ISSUE #18: RN EDUCATIONAL PROGRAM APPROVAL. ***The BRN is one of a few licensing boards that continues to actively approve educational programs. Should the BRN continue to approve RN educational programs, and if so, are there improvements that should be made?***

Staff Recommendation: *The BRN should continue to work with the Committees on the BRN's role and scope in approving and reviewing RN educational programs.*

BRN Response and Action

According to NCSBN, the BRN is in alignment with 49 other BONs in the United States that approve the nursing education programs within their state/territory. The BRN agrees with the staff recommendation and is committed to continue working with the Committee as well as with the Bureau for Private Postsecondary Education (BPPE), BVNPT, and other stakeholders to develop efficiencies. Additionally, the BRN created a workgroup of deans and directors to explore opportunities to streamline the current nursing program approval processes and will make any alignments that are supported by evidence and do not affect public protection (further discussed in the response for Issue #23).

ISSUE #19: NURSE EDUCATOR MEMBER. ***The BRN is required to have a member who is "an educator or administrator in an approved program." Should the educator member qualifications be more specific?***

Staff Recommendation: *The BRN should discuss the role and expectations of the RN educator member and whether additional qualifications would be beneficial to the BRN's education functions.*

BRN Response and Action

Per statute, the Board's composition includes four public members and five RN members. (BPC, § 2702.) The RN members consist of two direct patient care nurses, an advanced practice nurse, a nursing service administrator, and a nurse educator or administrator in an approved nursing educational program. The BRN appreciates the special insight that a nursing school educator or administrator provides to the Board, but BRN has not participated in discussions regarding any special qualifications for this member and whether additional qualifications would be beneficial; however, it would participate in such discussions. Any broadening or narrowing of the eligibility criteria for this member would require legislative amendments to BPC section 2702, subdivision (e).

ISSUE #20: EDUCATION COMMITTEE COMPOSITION. ***The BRN has established an Education/Licensing Committee to approve and review schools, among other functions. Should there be more representation of program directors and interested stakeholders?***

Staff Recommendation: *The BRN should discuss options for improving the ELC's stakeholder representation and input.*

BRN Response and Action

All committees of the Board, including but not limited to the Education/Licensing Committee (ELC), are comprised of Board members only. For non-consent agenda items, the nursing

programs are required to have program representation available to present and provide any clarification at the committee meetings. For consent agenda items, the NEC will have directly communicated with the nursing program, agreed with the recommendation to approve the nursing program's request, and presents the recommendation to the committee. Nothing precludes the nursing program to be present for a consent agenda item. Additionally, during committee meetings, the public and other stakeholders are afforded the opportunity to provide comments on items on the agenda, items not on the agenda, and items for future meetings. To further improve stakeholder representation and input, the BRN will explore the steps necessary to incorporate written comments into the meeting record.

ISSUE #21: JLAC AUDIT RECOMMENDATIONS. ***The State Auditor found that the BRN fails to use sufficient info when considering enrollment decisions and that its work overlaps with the work of accreditors. What is the status of the recommendations, and are additional statutory changes necessary?***

Staff Recommendation: *The BRN should provide an update on the implementation of the State Auditor's recommendations, continue to work with the State Auditor on full implementation, and work with the Committees on the State Auditor's Legislative Recommendations.*

BRN Response and Action

With the implementation of recommendation #1 in July 2021, the BRN has fully implemented five out of the nine audit recommendations, and it will continue to work with the State Auditor to implement the remaining four recommendations.

The remaining four recommendations all relate to clinical capacity information and are interrelated. To address the pending four recommendations, the BRN in partnership with DCA, developed and implemented a technological tool that allows BRN to compile and aggregate clinical facility and school specific information obtained from the updated clinical facility approval forms. This tool allows for the receipt of faculty data from the California Department of Public Health (CDPH) and HCAi. The development and testing of this tool is complete and entry and validation of clinical facility data is in progress. Upon completion of the data entry and verification that the data is accurate and current, it will be posted on the BRN public facing website and will ensure that the Board members have access to accurate and current data. Additionally, a regulation package is being presented to the Board on March 24, 2022, seeking Board approval for regulatory language after receiving public comment. This regulation package proposes to amend CCR sections 1427 and 1432 to require nursing programs to report any changes they make to their use of clinical facilities within 90 days of making the change and report annually if the program has made no changes. The BRN anticipates full implementation in 2023.

ISSUE #22: REGULATION VS. WORKFORCE MANAGEMENT. ***The BRN is a regulatory and enforcement agency. Is the BRN the proper entity for workforce management?***

Staff Recommendation: *The BRN should discuss its current workforce efforts, including upcoming plans for NEWAC and options for coordinating with other workforce agencies and stakeholders.*

BRN Response and Action
The BRN will continue to collaborate with workforce agencies including, but not limited to, California Labor and Workforce Development Agency, California Health and Human Services, CDPH, HCAi, California Hospital Association, and Health Workforce Initiative.

The BRN is working on coordinating meetings in 2022. The current structure of the Nursing Education and Workforce Advisory Committee (NEWAC) has been updated and the BRN is in the process of filling vacancies, onboarding committee members, and scheduling the next meeting to occur in the first half of this year.

ISSUE #23: DUPLICATION OF PROGRAM REVIEW. *Per the JLAC audit, there are duplicated services. Which duplicated services can be reduced?*

Staff Recommendation: *The BRN should identify and discuss any potential duplication of services.*

BRN Response and Action
After the release of the CSA Audit 2019-120, to address CSA's second recommendation to the Legislature, the BRN created a workgroup of deans and directors to explore opportunities to streamline current nursing program approval processes, including but not limited to efforts to align, in part, the BRN approval and the accreditation processes. The BRN facilitated bi-weekly meetings with this workgroup and when duplication of services was identified, BRN staff adjusted internal processes, as appropriate. For example, in the fall of 2021, the BRN completed the first Continuing Approval Visit (CAV) in partnership with the accreditation agency visit. This joint effort identified similarities but confirmed the vast differences between an accreditor's process utilizing an evaluation approach and the role of a regulator who serves as a consultant. For those nursing programs that are accredited, the BRN has aligned all future CAVs with accreditation visits and will leverage the accreditor's review to reduce duplication and increase efficiency where possible. Another example is faculty approvals as further discussed in the response for Issue #24.

NCSBN shares on its website[11] that program approval is an integral part of the state licensure process because it assures standards are met, whereas national nursing accreditation assesses the quality of nursing programs from a national perspective. In December 2019, NCSBN sought to verify the current accreditation status of nursing programs[12] and when comparing the 2012 accreditation rates to the current rates, there is a decrease in accreditation rates from 96 percent to 89.1 percent for BSN or higher and a slight increase from 52 percent to 53.2 percent for ADN programs.
Additionally, the following information is provided from NCSBN:

> In the United States, prelicensure nursing education programs are required to be approved by the BON in the state where the program is officially located. This approval process begins with an initial application and extensive proposal to the BON, which performs an extensive evaluation ensuring the program has the proper facilities, resources, administration and faculty, curriculum, clinical agreements, policies, and procedures, among many other requirements set forth in state regulations. Once the

[11] https://www.ncsbn.org/education.htm
[12] https://www.ncsbn.org/Percentages_Accredited_Programs_L2L.pdf

program is approved, the BON continually monitors the program. To obtain BON nursing education program approval, nursing programs must meet the nursing education standards established by their BON. Only students graduating from officially recognized and approved programs are permitted to take the NCLEX, the official nursing licensure exam in the US and Canada. (Spector & Woods, 2013).

For our national Delphi study, data were provided on consensus from experts in nursing education, regulation, and practice on nursing education quality indicators, warning signs when programs are beginning to fall below standards, and performance outcome measures of nursing education programs. Consensus among the experts was reached after 2 rounds of discussion. This Delphi study identified 18 quality indicators (characteristics of nursing programs that graduate safe and competent students), 11 warning signs when nursing programs begin to fall below standards, and eight program performance outcomes that nursing regulatory bodies could measure. The quality indicators fall into the categories of (a) school leadership and faculty support; (b) consistent and competent faculty; (c) quality, hands-on clinical experiences with meaningful collaboration with clinical partners; and (d) an evidence-based curriculum emphasizing quality and safety and critical thinking/clinical reasoning. Although the warning signs are similar to the quality indicators (only the opposite), there are additional ones that are of interest, including over-reliance on simulation to replace clinical experiences and refusal of clinical facilities to host clinical experiences. There were few surprises with the outcomes that were identified (NCLEX pass rates, graduation rates, employment rates, etc.)[13]

ISSUE #24: FACULTY APPROVAL. ***The BRN has very specific requirements for faculty. Are these requirements necessary?***

Staff Recommendation: *The BRN should discuss its faculty approval process in relation to the BPPE and accreditors, including any evidence supporting the experiential and minimum faculty requirements.*

BRN Response and Action

In California, teaching credentials, which include administrative credentials for school administrators, are required and governed by the California Commission on Teacher Credentialing. A preliminary teaching credential can be granted upon possession of a baccalaureate degree and successful completion of an examination or assessment for each subject taught and is valid for three years. The professional teaching credential is granted after successful passage of a state examination or assessment. Each of these credentials, certificates, or permits are valid for more than five years from the date of issuance. Additionally, all new teachers complete a program that supports their transition to education and provides for initial review and periodic evaluation called “induction.”

Likewise, all nursing faculty must meet the minimum qualifications as delineated in CCR sections 1420, subdivision (d), 1424, subdivision (h), and 1425 for Board approval prior to teaching. The nursing program is required to notify the Board of each new faculty appointment prior to employment and of any change of teaching classification or the addition of content areas. BRN

[13]https://www.ncsbn.org/Spector_NCSBN_Regulatory_Guidelines_and_Evidence_Based_Quality_Indicators_for_Nursing_education_programs.pdf

approval of nursing faculty ensures that the nurse has recent experience within five years and is supported through a stepped process that allows them to transition from an Assistant Instructor (similar to the preliminary teaching credential) to an instructor (similar to a professional teaching credential). Additionally, these qualifications are consistent with NCSBN guidelines[14] which ensure nursing faculty members are clinically competent in the areas which they are teaching.

The BRN faculty approval process allows for various entries into nursing academia. RNs with associate degrees can become approved by the BRN as clinical teaching assistants (CTAs) after completing one year of continuous full-time or equivalent nursing experience in the previous five years; the CTA can assist with instruction and student interaction in the clinical teaching experience, including both direct patient care and simulation. RNs with baccalaureate degrees can receive approval as an assistant instructor (AI) that can oversee a clinical group under the direction of the lead faculty member, can assist in the laboratory setting, and guest lecture. RNs with master's degrees are typically approved at the level of an AI to allow for one year of on-the-job training and a thorough orientation and mentorship before consideration of approval at the level of an instructor, provided they have one year of teaching experience. These various levels allow nursing programs to hire RNs who are still in the process of obtaining a graduate or terminal degree which helps to alleviate the nursing faculty shortage. Accredited nursing programs can only hire faculty who are master's or doctorate prepared, which limits their applicant pool.

The accreditation process, through the Commission on Collegiate Nursing Education (CCNE) and Accreditation Commission for Education in Nursing (ACEN), requires that faculty members are academically prepared and experientially prepared but does not specify nursing faculty qualifications. Additionally, the accreditation process approves nursing faculty without ensuring subject area competency. Accredited programs submit an annual report that shows faculty numbers and credentials, and nursing faculty are reviewed during the eight to ten-year accreditation visits. These reports and accreditation visits often occur after the nursing faculty have instructed students in both theory and clinical and have had interactions with patients; such interaction is a concern if the nursing faculty are later determined to be unqualified. As mentioned in response to Issue #23 above, the BRN is exploring opportunities to align, when appropriate, nursing program approval with accreditation processes including, but not limited to, faculty approvals.

The BRN is responsible for ensuring that academic institutions and nursing education programs are in compliance with regulatory standards specific to nursing education. The Bureau for Private Postsecondary Education (BPPE) is responsible for ensuring that the academic institution presenting the nursing program meets regulatory standards for institutions of post-secondary education. The BPPE is required by California Education Code (EDC) section 94899 to ensure that when an institution offers an educational program in a profession that requires licensure in the state, the institution shall have educational program approval from the appropriate state licensing agency to conduct the educational program. This ensures that a student who completes the educational program is eligible to take the required licensure examination. The BRN is required, under BPC section 2786.2, to ensure that a private

[14]https://www.ncsbn.org/Spector_NCSBN_Regulatory_Guidelines_and_Evidence_Based_Quality_Indicators_for_Nursing_education_programs.pdf

postsecondary school of nursing approved by the BRN complies with the California Private Postsecondary Education Act of 2009 (EDC, § 94800 et seq.).

The BRN is also required to have a Memorandum of Understanding (MOU) with the BPPE that outlines the powers of the BRN to review and approve schools of nursing and the powers of the BPPE to protect the interests of students attending institutions governed by the California Private Postsecondary Education Act of 2009. The BRN will continue to enhance its collaboration and partnership with BPPE to ensure greater protection for students.

Additionally, on March 24, 2022, to help streamline the nursing faculty approval process, the BRN, in collaboration with DCA, developed an IT enhancement to associate the faculty approval (teaching credential) to the faculty member's RN license which is accessible on the DCA's License Search Page. This change will require that the BRN NEC only approve the faculty one time unless additional leveling or content areas are added.

From NCSBN Regulatory Guidelines and Evidence-Based Quality Indicators for Nursing Education Programs:[15]

> A marginally significant finding was that programs with more than 35% full-time faculty had ≥ 80% first-time NCLEX pass rates and full approval. High faculty turnover and the inability to recruit qualified faculty were linked to poor NCLEX performance. Faculty with little training in basic pedagogies was a persistent theme found in failing programs. Similarly, heavy faculty workloads and limited faculty development opportunities were also identified.

ISSUE #25: CLINICAL SIMULATION. ***The use of simulated clinical experiences is becoming more common, particularly during the COVID-19 pandemic. Should more simulation be allowed, and should there be standards for the use of clinical simulation?***

Staff Recommendation: *The BRN should discuss its current process for overseeing simulation, whether it supports any specific amount of simulation, and whether standards can and should be established.*

BRN Response and Action

BRN's mission is consumer protection, and one element of that is the BRN's enforcement of regulations for minimum standards on nursing programs. The NPA regulates direct patient care, not clinical simulation. There are no existing regulations that expressly address simulated nursing training, nor have adequate studies been completed that could be used as a road map to implement in California. Per the Journal of Nursing Regulations, Volume 8, Issue 4, January 2018:[16]

> Although no evidence supports a specified number of hours needed for adequate supervised clinical experiences, according to NCSBN's Model Rules, the number of hours should be comparable to clinical hours in similar programs (e.g., programs with the same level of education, those of comparable sizes, etc.) (NCSBN, 2012). Nationally, for example, the average number of clinical hours for

[15]https://www.ncsbn.org/Spector_NCSBN_Regulatory_Guidelines_and_Evidence_Based_Quality_Indicators_for_Nursing_education_programs.pdf
[16] https://www.ncsbn.org/Spector_Hooper_Silvestre_Hong_BON_Approval_of_Registered_Nurse_Education_Programs.pdf

> RN programs are: associate-degree programs = 621; diploma programs = 737; baccalaureate programs = 733; and master's entry programs = 780 (Hayden, 2010). Although the NCSBN national simulation study (Hayden, Smiley, Alexander, Kardong-Edgren, & Jeffries, 2014) and the simulation guidelines (Alexander et al., 2015) have focused on quality simulation experiences, no studies have focused on the quality of and minimum hours needed for hands-on clinical experiences.

The BRN is not opposed to clinical training via simulation when done well and as an adjunct to direct patient care clinical training. In regulation, the requirement that 75 percent of clinical training be in direct patient care, spread across the five nursing content areas over 18 semester units or 27 quarter units, could use some clarification; a minimum number of hours of direct patient care, rather than a percentage, could be established that would provide this clarification. In November 2021, the Board voted to update CCR section 1426 to move to establish a minimum clinical hour requirement for supervised direct patient care experiences. CSA, in its report on audit 2019-120, calculated minimal clinical hour requirements based on a 16-week semester, for a total of 864 hours. However, according to CCR section 1426, subdivision (g)(2), the minimum direct patient care clinical hours requirement – 75 percent – is 648 hours. Since fundamentals of nursing courses can be done with 100 percent simulation, the minimum direct patient care clinical hours can be further reduced to under 600 hours.

Additionally, American Samoa, Commonwealth of the Northern Mariana Islands, Colorado, Washington DC, Oregon, and Washington have established a minimum requirement between 500-750 hours and Hawaii has established hours as greater than 1,000. Per the NCSBN Simulation Guidelines for Prelicensure Nursing Education Programs,[17] all programs participating in the National Simulation Study required at least 600 hours of clinical experience in the pre-licensure curriculum. No evidence is available regarding the outcomes of substituting traditional clinical experiences with simulation when the program has less than 600 hours. Within that same report, NCSBN states that BONs should consider the following criteria when determining the amount of simulation that can be substituted for traditional clinical hours:

1. Overall number of clinical hours by the program
2. Pass rates of students
3. Availability of clinical sites
4. Turnover of faculty/program director
5. Complaints from students
6. Retention rates

The BRN evaluates areas 2-5 above during initial and continuing approval. The Board will establish by regulation #1, and although #4 and #6 are data that is collected, it may be a benefit if this quality indicator is established in regulation to ensure that this process is in alignment with the data.

NCSBN is collecting evidence and has shared that it will be presenting that data in the next year. From the NCSBN website: "The National Prelicensure RN study investigates the impact of the rapid changes being made in nursing education programs across the US in response to the COVID-19 pandemic. Currently underway at more than 50 nursing program sites across the nation, this study seeks to determine the extent to which prelicensure RN programs, either

[17] https://www.ncsbn.org/11494.htm

traditional Bachelor of Science in Nursing (BSN) or Associate Degree in Nursing (ADN), changed their didactic and/or clinical delivery formats due to the COVID-19 pandemic. The study will then prospectively and longitudinally track student outcomes to measure engagement, academic performance, and early career experience."[18]

The BRN could consider revising its regulation once that data is available to provide a clear minimum standard for direct patient care, which would allow all other clinical hours offered by the academic institution to be in any form they choose, including simulation. This would allow the academic institution to decide what ratio of simulation to direct patient care clinical experiences are best for their specific student demographic, faculty training, and funding after they have met the minimum direct patient care clinical hours. Simulation can be an excellent supplement to direct patient care clinical training but is not a substitute for direct patient care clinical training, especially in pre-licensure education.

BRN does believe that direct patient care clinical experience is important for newly graduated RNs in the workplace to eliminate the potential for errors in patient care or patient assessment. The BRN will continue to monitor both the state and federal data on simulation and apply best evidence in the decision-making process. The BRN would continue to meet public protection through ensuring that the student learning experiences are in alignment with the established approved curriculum and designed to meet clinical objectives.

ISSUE #26: CONCURRENCY OF THEORY AND CLINICAL. ***Nursing student education is required to have classroom and clinical learning occur at the same time. Should there be additional flexibility to this requirement?***

Staff Recommendation: *The BRN should discuss its concurrency requirement, including any studies or other evidence demonstrating the benefits of concurrency or specifically tying learning outcomes to the timing of theory and clinical experience.*

BRN Response and Action

To ensure the BRN is carrying out its mission of consumer protection, it is important to have the education in theory and clinical training delivered concurrently within the same academic term. For example, a 16-week semester could be scheduled with the first eight (8) weeks as the theory component and the second eight (8) weeks as the clinical component. RNs are expected to assess, analyze, synthesize, and critically interpret information, and decide and implement a course of action quickly and thoroughly. This ability for clinical reasoning stems from the RN's theory and clinical experiences. The process of integrating theory into practice is challenging; however, using evidence combined with experience and skill provides the ultimate in learning and decision-making strength. Without theory and clinical being concurrent, the RN's reflection may be flawed, and the impact of the decisions made may be inappropriate, skewed, or perhaps devastating.

Following the principles of adult learning; nursing programs design curriculum to be interactive through group work and skills labs, support the transition of the learner from novice to expert through integrating high quality simulation and immersive in nature through supervised direct patient care. Hands on clinical training builds on theory and theory builds on clinical training; it is a specific symbiotic structure used in nursing education, as nursing is both a science and an

[18] https://www.ncsbn.org/ongoing-research.htm

art. Nursing naturally follows the processes recommended for teaching Science, Technology, Engineering, and Math (STEM). These experiences allow students to learn by doing. This can only be achieved by ensuring that students apply what they have learned in the classroom and simulation labs to real-world situations. The “theory-practice gap” has been cited as a contributory factor in medication errors and reduced use of physical assessment skills among nurses, influencing quality of nursing care and patient outcomes. Without having concurrency of theory and clinical, the student is vulnerable for an increased risk of errors. In California, nursing schools whose NCLEX passage rates fall below the 75 percent requirement often have issues with their clinical training and with concurrency of the clinical training and theory. The BRN strongly believes that California’s concurrency requirement best prepares nursing students for success to ensure consumer protection.

ISSUE #27: NEC CONSISTENCY. *NECs follow the same guidelines and regulations. Why do they sometimes make decisions inconsistently?*

Staff Recommendation: *The BRN should discuss what may account for NEC inconsistency and develop ways to improve it.*

BRN Response and Action

The BRN agrees with the staff recommendation that some NEC decisions may appear inconsistent. However, the NEC decisions are based on the facts presented to them and not all situations are the same. The prior BRN NEC meeting frequency was quarterly; in or around 2018, this frequency was increased to monthly. To further improve communication, the NEC meetings now occur weekly and with a consistent meeting structure. Additionally, all SNECs and NECs participate in the New Hire Orientation and serve as mentors for increased collaboration. These meetings provide training and team discussions to ensure rules and regulations are applied consistently throughout the State. The fact that the BRN’s current EO is a former NEC has proven to be beneficial in creating and maintaining a foundation based on transparency and consistency.

ISSUE #28: AVAILABILITY OF CLINICAL PLACEMENTS. *Clinical placements for nursing students are historically limited and are more so as a result of COVID-19. Does the BRN have a plan to resolve this issue?*

Staff Recommendation: *The BRN should update the Committees on the current state of clinical placements and potential solutions going forward. The BRN should advise the Committees as to how it selects and uses certain data related to nursing shortage areas, current program enrollment figures, simulated learning options, and alternate site availability in making programmatic approval decisions, including decisions on clinical placements.*

BRN Response and Action

The BRN contracts with the University of California at San Francisco, Philip R. Lee Institute for Health Policy Studies to conduct workforce surveys and perform data analysis projects. The data collected from these surveys and analyses are used by many stakeholders including nursing organizations, employers, policymakers, researchers, students, and the public.

There are many factors that should be considered when analyzing the nursing workforce data. It is a widespread belief in the nursing and health care communities, that as the nursing

workforce continues to age, the state's population ages and grows, and increased demand for health care moves forward, the demand for nursing services will increase in the future. Therefore, when making decisions on approvals for new nursing programs and enrollment changes for existing nursing programs, the Board must be mindful of the community and shared resources within the various California regions.

The most recent complete data on clinical placements is reflected in the 2020-2021 Annual School Survey. This survey collects data on programs that were denied clinical space they had the previous year, the strategies used to address the loss, and the reasons for being denied. Below is the data that was collected for the past three years:

Programs Denied Clinical Space	**2018-19**	**2019-20**	**2020-21**
Number of programs denied a clinical placement, unit or shift	70	125	128
% of programs	49.6%	85.6%	88.3%
Number of programs that reported	141	146	145
Total number of students affected	2,271	1,080 *22,145**	15,043

Strategies to Address the Loss of Clinical Space	**2018-19**	**2019-20**	**2020-21**
Replaced lost space at different site currently used by nursing program	79.4%	65.0%	49.6%
Added/replaced lost space with new site	55.9%	60.2%	55.1%
Clinical simulation	45.6%	87.8%	78.7%
Replaced lost space at same clinical site	33.8%	32.5%	32.3%
Reduced student admissions	11.8%	29.3%	27.6%
Other	5.9%	15.4%	18.9%
Number of programs that reported	68	123	127

Reasons for Clinical Space being Unavailable	**2018-19**	**2019-20**	**2020-21**
Competition for clinical space due to increase in number of nursing students in region	43.5%	30.0%	22.0%
Displaced by another program	43.5%	21.7%	25.2%
Staff nurse overload or insufficient qualified staff	50.7%	17.5%	25.2%
Visit from Joint Commission or other accrediting agency	23.2%	12.5%	15.7%
Decrease in patient census	17.4%	9.2%	9.4%
Change in facility ownership/management	18.8%	8.3%	9.4%
Other	14.5%	17.5%	2.4%
No longer accepting ADN students	21.7%	12.5%	11.8%
Nurse residency programs	26.1%	6.7%	12.6%
Closure, or partial closure, of clinical facility	18.8%	22.5%	19.7%
Clinical facility seeking magnet status	14.5%	9.2%	7.1%
Implementation of Electronic Health Records system	20.3%	8.3%	7.1%
The facility began charging a fee (or other RN program offered to pay a fee) for the placement and the RN program would not pay	1.4%	3.3%	1.6%

Facility moving to a new location	0%	0%	0%
Staff nurse overload or insufficient qualified staff due to COVID-19		73.3%	72.4%
Site closure or decreased services due to COVID-19		65.8%	64.6%
Change in site infection control protocols due to COVID-19		69.2%	59.8%
Lack of PPE due to COVID-19		79.2%	48.8%
Decrease in patient census due to COVID-19		43.3%	41.7%
Number of programs that reported	69	120	127

Note: Blank cells indicate that the applicable information was not requested in the given year.
** Italicized numbers in 2019-2020 indicate post-pandemic numbers of placements lost and students affected*

Clinical displacement is problematic not only in California but for other state nursing boards as well. This has been a frequent topic of exploration in the regular NCSBN Education Network conferences. The NECs work with the nursing programs to identify other options including, but not limited to, health care clinics, churches, skilled nursing facilities, addiction and rehabilitation facilities, birth centers, summer camps, correctional facilities, public health clinics, home health, outpatient surgery centers, hospice care, Veterans Health Administration and within the Military health systems, to ensure students have the clinical experience needed to progress. Additionally, establishing a minimum clinical hour requirement for supervised direct patient care experiences (further discussed in the response for Issue #25) may minimize some of the impact of clinical displacement. Finally, the BRN has researched and discussed statewide or regional consortiums as a way to identify every student placement in all clinical settings, provide a transparent system for resolving clinical placement conflicts, and documenting problem areas.

Consortiums coordinate and allot available clinical placements to ensure the most efficient utilization of clinical facility resources; however, decisions regarding allotment of clinical placements to nursing programs are ultimately the decision of each individual clinical facility. There are currently limited consortiums available in California and they are not uniform nor are they located in every region, and participation in the consortiums is voluntary. Without legislative and regulatory authority, BRN cannot implement a statewide consortium with a regional focus and require all clinical settings and academic institutions to participate. Such a system could provide a complete and accurate representation of available clinical placement slots.

Additionally, many of the prelicensure nursing programs require more than the minimum clinical hours outlined in CCR section 1426. When the Board defines in regulations the minimum supervised direct patient care experiences this would also reduce the number of hours required under some programs' approved curricula, therefore allowing more clinical training slots to be available to accommodate additional nursing program students. For example, if a school reduced its clinical hour requirement by 384 hours to align with the regulatory minimum, it would create 32 12-hour clinical training slots that would be available for other students. This issue was exasperated with the COVID-19 pandemic when many facilities ceased allowing nursing students to enter into their facilities for clinical training.

ENFORCEMENT ISSUES

ISSUE #29: FORMAL DISCIPLINE TIMELINES. ***The BRN is unable to meet its target timelines for cases that rise to the level of formal discipline, Performance Measure 4 (PM4). Can the BRN improve its processes to meet its target, and should PM4 be modified to better reflect the different stages of an enforcement case?***

Staff Recommendation: *The BRN should discuss if there are additional improvements that can be made to its PM4 timelines and whether the PM4 measure can be broken up to better identify where bottlenecks may exist.*

BRN Response and Action

DCA utilizes PM4 to report total number of cases closed within the specified period that were referred to the AGO for disciplinary action. This includes formal discipline, and closures without formal discipline (e.g., withdrawals, dismissals, etc.). All stages are tracked within PM4 with subcategories including intake, investigation, and pre- and post-AGO. This report is based on data entered into the BreEZe system.

PM4 does not distinguish between Division of Investigation (DOI) and BRN's internal investigations. The timeframe it takes for DOI to complete an investigation or the timeframe for the AGO to prosecute a case is also not delineated in PM4. In FY 2020-2021, the average timeframe for DOI and BRN investigations was, respectively, 368 days and 216 days. The AGO had an average timeframe of 354 days. If PM4 provided further details on the various stages of case processing, BRN could use this data to identify greater efficiencies. BRN will work with the DCA on this and will continue to identify and implement business process improvements to reduce the processing time of cases within the BRN's control.

ISSUE #30: PEACE OFFICER AUTHORITY. ***The BRN has requested that its investigators be authorized to exercise specified peace officer powers, including the powers of arrest, to serve warrants, and receive criminal history information. Should the BRN's investigators be granted this authority?***

Staff Recommendation: *The BRN should detail how the peace officer authority will assist its investigators in various stages of an investigation, whether there will be any fiscal impacts, and how the investigators with peace officer powers will be integrated into the enforcement division and its partnership with DCA's DOI.*

BRN Response and Action

BPC section 108 authorizes the BRN to conduct investigations of violations of the NPA. Penal Code (PC) section 830.11 provides limited peace officer status for investigators at various California state entities. Persons designated as peace officers under PC section 830.11 are not entitled to peace officer retirement benefits and may not carry firearms. BRN would only advance this proposal on the condition that it would grant BRN Special Investigators (SI) additional authority without expanding pension benefits or increasing salaries; therefore, there would be no fiscal impact. If approved with the PC 830.11 distinction, the BRN's current Supervising Special Investigators (SSIs) and SIs would remain in their current classification but would be considered public officers.

Inclusion of BRN in this statute would provide all BRN SSIs and SIs with the authority and status, during an investigation, to:

- receive state summary criminal history information and receive that information on the same basis as other peace officers of the state under PC section 830.11, subdivision (c);
- work effectively with other law enforcement personnel and promote a reciprocal exchange of information with other law enforcement agencies;
- exercise the powers of arrest under PC section 836 and, specifically, to issue misdemeanor citations (PC, § 853.5);
- seize and take possession of any evidence found in plain view during lawful observation, without a warrant; and
- criminally charge an individual who obstructs any peace officer from discharging or attempting to discharge any duty of his or her office (PC, § 148).

Although the need for outside law enforcement assistance would diminish, the BRN would continue to utilize the services of DOI when full peace officer status is needed. BRN SSIs and SIs will be afforded access to peace officer-only informational databases, the authority to affect an arrest, if needed, and to issue a cite and/or fine.

ISSUE #31: COST RECOVERY. ***During the BRN's 2017 Sunset Review, the BRN reported that it was looking into improvements to its cost recovery functions. What is the status of that research?***

Staff Recommendation: *The BRN should provide any additional updates on its response to the issue raised and the outcome of its research into cost recovery and trends.*

BRN Response and Action

As reported in the 2020 Sunset Report, item 5.20, there are no additional updates to the cost recovery functions based on research as a result of the 2017 Sunset. The BRN will continue its process for cost recovery, including but not limited to, extending probationary terms and/or placing a hold on the license until the cost recovery is paid in full, or using the Franchise Tax Board (FTB) to collect outstanding fines for those individuals residing in and filing California taxes. For some formal discipline, the BRN could use FTB to collect outstanding fines. For cite and fine, which is not considered discipline, BRN currently uses the FTB prescribed processes for collection purposes.

Since FY 2017-2018, the amount collected towards the total amount ordered continues to increase. The BRN will continue to evaluate if there are more efficient and effective means of cost recovery.

ISSUE #32: AUDITS OF CE PROVIDERS. ***The BRN notes that it began auditing continuing education providers (CEPs) in 2016, but that the review was labor-intensive and requires additional staff. What is the current status of the CEP audit unit?***

Staff Recommendation: *The BRN should provide an update on its CE NEC recruitment efforts and any other outstanding implementation of its CEP approval/disapproval plan.*

BRN Response and Action
Applications for the CE NEC are received and screened on an ongoing basis with interviews scheduled for those applications who meet the scoring criteria. To date, no applicants have been successful in the hiring process; however, the BRN remains committed to hiring for this position. The next step for the implementation of the Continuing Education Provider (CEP) approval/disapproval plan is to establish the recommended fee of $115 per additional course at the time of initial application and the $195 fee for the CEP audit, to be incorporated into each CEP renewal application.

ISSUE #33: CE COMPLIANCE DOCUMENTATION. ***Licensees are only required to submit CE compliance information once audited. Should licensees instead submit CE compliance information upon renewal?***

Staff Recommendation: *The BRN should discuss the feasibility and any potential benefit of allowing licensees to upload CE compliance documents at the time of renewal.*

BRN Response and Action
Currently, BreEZe allows licensees to upload continuing education (CE) compliance documents at the time of renewal; however, it is not required. The BRN would support an effort to require the CE compliance documents to be submitted through BreEZe at the time of renewal which would require a regulatory update. Pursuant to CCR section 1451, subdivision (d), licensees must keep the certificates from the academic institutions for a period of four years from the date of completion of the approved CE education course. The licensee must provide to the Board, upon request, the certification of completion of the approved CE course during a CE compliance audit to ensure the licensee is in compliance with the four-year retention requirement. Requiring, by regulation, that CE compliance documents be uploaded at the time of renewal would allow staff to perform audits randomly through BreEZe without requesting additional information from the licensee and would also allow BreEZe to serve as the repository for the four years that the licensee must retain these documents.

ISSUE #34: SCHOOL NURSES. ***The BRN reports that it is concerned about the services that unlicensed school nurses provide. What changes, if any, are necessary to ensure the safety and proper care of students?***

Staff Recommendation: *The BRN should discuss any instances of harm it may be aware of and present any solutions it may have to address those instances of harm.*

BRN Response and Action
As the California Department of Education (CDE) is the entity governing unlicensed school nurses (also known as a School Health Clerk or Aide) and other designated school personnel, the BRN is not aware of specific instances of harm from school personnel, as the BRN does not have jurisdiction over these personnel.

EDC section 49426 explains that a School Nurse is an RN with a bachelor's degree, who has completed the additional education requirements for and possess a current credential in school nursing by the Commission on Teacher Credentialing. School Nurses strengthen and facilitate the educational process by improving and protecting the health of children and by identification and assistance in the removal or modification of health-related barriers to learning in individual

children. The major focus of school health services is the prevention of illness and disability, and the early detection and correction of health problems. The School Nurse is especially prepared and uniquely qualified in preventive health, health assessment, and referral procedures.

Unlicensed assistive personnel and/or trained health care aides may administer medications (EDC, § 49423) in the education setting when the pupil's physician has delegated the responsibility of medication administration on the pupil's medication form and the student's parents have consented that the pupil may be assisted with medication administration at school on the medication form. This was further supported through a Supreme Court of California decision (*American Nurses Association v. Torlakson* (2013) 57 Cal. 4th 570). CDE regulations to govern this process were developed in consultation with parents, representatives of the medical and nursing professions, and other individuals jointly designated by the Superintendent of Public Instruction, the Advisory Commission on Special Education, and the department formerly known as the Department of Health Services.

The BRN will continue to monitor and provide input and participate in discussions with consumers, the CDE, school nurses and nursing organizations, as well as other stakeholders, to address school health-related issues as they relate to RN practice.

COVID-19 ISSUES

ISSUE #35: MENTAL HEALTH SERVICES FOR COVID-19 PROVIDERS. U*nder ordinary circumstances, frontline healthcare providers and first responders often face difficult situations that are mentally and emotionally challenging. Are there new issues arising from, or ongoing issues being worsened by, the extreme conditions of the COVID-19 pandemic?*

Staff Recommendation: *The BRN should discuss any findings related to the mental and behavioral healthcare needs of frontline healthcare providers arising from the COVID-19 pandemic.*

BRN Response and Action
The BRN is aware of the mental health impact that COVID-19 has had on frontline healthcare providers. The BRN is interested in participating in discussions and stakeholder engagement(s) for identifying and developing solutions.

ISSUE #36: COVID-19. *Since March of 2020, there have been a number of executive-issued waivers, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?*

Staff Recommendation: *The BRN should advise the Committees on the use of the COVID-19 waivers, including the number of temporary licenses issued to out-of-state licensees and any associated timelines, and the ongoing necessity of any of the waivers.*

BRN Response and Action
The BRN worked with DCA to provide input and request extensions to the waivers that were serving the public. Currently, no waiver extensions are being considered. The BRN will continue to evaluate the impact of COVID-19 and seek legislative changes, if necessary.

In 2021, the BRN issued over 29 percent more licenses to out-of-state RN applicants and granted over 1,100 temporary licenses. Additionally, according to the most recent data provided by EMSA as of November 2021, there were over 21,410 RNs and 1,293 APRNs approved by EMSA to go to the facilities identified in the requests and practice in California without a California license.

	FY 2019-20	FY 2020-21	FY 2021-22 (as of 2/28/22)
Endorsement Licenses Issued	12,214	10,010	7,412
Temporary Licenses Issued (non-waiver)	2,810	3,887	3,421

Additionally, to address future licensing needs through some of the goals within the 2022-2025 Strategic Plan,[19] the BRN will update business processes to include, but not be limited to: reduce license processing times to improve access and customer satisfaction; align educational oversight activities with national accreditation programs to identify and reduce any redundancies; continue to assess and report on workforce needs and the availability of clinical placement sites to ensure the Board's decisions are evidence-based; and review statutes and advocate for updates or new statutes as appropriate to ensure they are current and based on evidence and best practices.

EDITS TO THE PRACTICE ACT

ISSUE #37: TECHNICAL EDITS. ***Are there technical changes to the Nursing Practice Act that may improve BRN operations?***

Staff Recommendation: *The BRN should continue to work with the Committees on potential changes.*

BRN Response and Action
The BRN is reviewing the NPA and preparing a list of BPC sections that should be revised. Upon completion, this list will be approved by the Board and will be submitted.

[19] https://www.rn.ca.gov/pdfs/consumers/stratplan22-25.pdf

ISSUE #38: SUNSET EXTENSION. ***Should the current BRN be continued and continue regulating the practice of RNs?***

Staff Recommendation: *The BRN's regulation of RNs should be continued and be reviewed again on a future date to be determined.*

BRN Response and Action

The BRN agrees with the Committee's recommendation and thanks the Committee for their support. Additionally, the BRN recognizes the areas of improvements that the Committee has identified and will continue business process improvements to achieve sustainable long-term solutions.