

State of Arizona  
Office  
of the  
Auditor General

**PERFORMANCE AUDIT**

**BOARD  
OF  
NURSING**

**Report to the Arizona Legislature  
By Debra K. Davenport  
Auditor General**

**September 2001  
Report No. 01-21**

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AUDITOR GENERAL

STATE OF ARIZONA  
OFFICE OF THE  
AUDITOR GENERAL

WILLIAM THOMSON  
DEPUTY AUDITOR GENERAL

September 12, 2001

Members of the Arizona Legislature

The Honorable Jane Dee Hull, Governor

Ms. Joey Ridenour, Executive Director  
Arizona State 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 June 16, 1999, resolution of the Joint Legislative Audit Committee. The performance audit was conducted as part of the Sunset review set forth in A.R.S. §41-2951 et seq. I am also transmitting with this report a copy of the Report Highlights for this audit to provide a quick summary for your convenience.

As outlined in its response, the Board of Nursing agrees with all of the findings and plans to implement all of the recommendations.

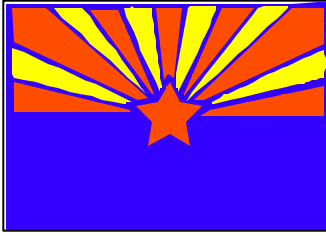
My staff and I will be pleased to discuss or clarify items in the report.

This report will be released to the public on September 13, 2001.

Sincerely,

Debbie Davenport  
Auditor General

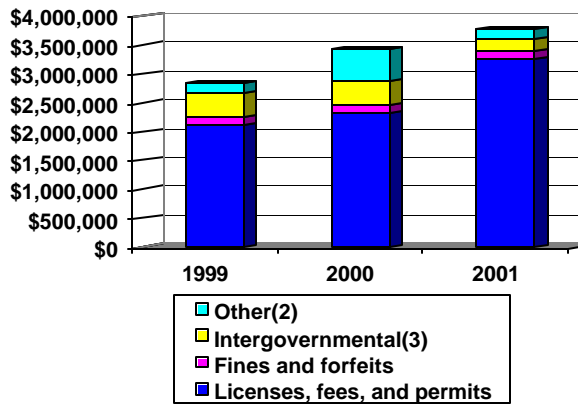
Enclosure



# Board of Nursing

**Services:** The Board of Nursing (Board) is responsible for regulating nurses and certified nursing assistants (CNAs) through licensure and certification. The Board performs the following services: **1) Approving individuals for licensure, registration, and certification; 2) Approving educational programs for nurses and nursing assistants; 3) Investigating and adjudicating complaints** concerning allegations of unprofessional conduct or other violations of the Nurse Practice Act; and **4) Providing consumer information to the public.**

## Program Operations Revenue<sup>1</sup>:



<sup>1</sup> The Board retains 90 percent of its revenues for operating and remits all of its administrative penalties and 10 percent of all other revenues into the General Fund.

<sup>2</sup> For fiscal year 2000, includes a \$320,000 General Fund appropriation to pay for fingerprinting certified nursing assistant applicants.

<sup>3</sup> Consists of federal monies for nursing assistant certification.

## Facilities:

The Board owns no facilities. The Board's office is located in a state-owned building at 1651 E. Morten, in Phoenix. Board meetings are held at this location.

## Personnel:

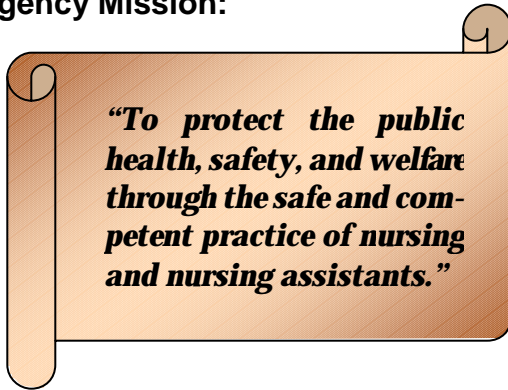
The Board consists of nine members who serve five-year terms:

- Five registered nurses who have at least five years' experience in nursing following graduation and have been actively engaged in the practice of nursing for at least five years prior to the appointment.
- Two licensed practical nurses who must also have five years' nursing experience and have been actively engaged in nursing at least three years prior to the appointment; and
- Two public members who are not employees of any health care institution and do not have a financial interest as a provider in the delivery of health care services.

As of July 1, 2001, the Board had 53.8 full-time staff:

- Administration and Support Staff (23)
- Licensing (9)
- Investigations/Adjudication (21.8)

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**Agency Mission:**

***“To protect the public health, safety, and welfare through the safe and competent practice of nursing and nursing assistants.”***

**Equipment:**

In addition to owning standard office equipment, the Board also rents a vehicle from the Department of Administration for \$403 per month.

**Program Goals (Fiscal Year 2000-2001):**

The Board of Nursing consists of the following two programs:

**Licensing and Regulation—RN/LPN:**

1. To reduce the cycle time needed to issue certificates and licenses for examinee, endorsement, and renewal applicants.
2. To reduce the cycle time needed to investigate complaints, complete hearings, and increase compliance with consent agreements and Board orders.
3. To effectively provide a non-disciplinary Chemically Addicted Nurse Diversion Option (CANDO) program.
4. To provide an effective educational program monitoring process for schools of nursing that promotes a high percentage of RN/LPN examinees passing NCLEX (a national licensure exam for RNs and LPNs).

**Nursing Assistant:**

1. To reduce the cycle time needed to issue certificates for examinee, endorsement, and renewal applicants.
2. To reduce the cycle time needed to investigate complaints, complete hearings, and increase compliance with consent agreements and Board orders.

**Adequacy of Performance Measures:**

The Board has established appropriate performance measures within its Licensing and Regulation—RN/LPN and Nursing Assistant programs. For example, the Board has established measures focusing on its licensing, certification, and complaint investigation activities; the timeliness and results of those activities; and customer satisfaction with these efforts.

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## SUMMARY

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Nursing (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

The Board is responsible for regulating registered nurses (RNs), licensed practical nurses (LPNs), and certified nursing assistants (CNAs). The Board's duties include issuing and renewing licenses, conducting investigations and hearings concerning unprofessional conduct, disciplining violators, and providing consumer information to the public. As of July 2001, the Board licenses approximately 47,300 RNs, including 2,350 RNs certified as advanced practice nurses, and 9,320 LPNs and certifies approximately 18,600 CNAs. Further, the Board reports that it received approximately 2,200 complaints in fiscal year 2000.

### **The Board Should Improve the Timeliness of Its Complaint Investigations (See pages 11 through 18)**

The Board should take several steps to ensure complaints are investigated in a timely manner. Auditors' review of 83 complaint investigations presented to the Board in fiscal year 2000 for adjudication found that the Board's investigation times ranged from 32 days to 1,938 days, with over half of these investigations taking longer than 360 days.<sup>1</sup> In addition, as of August 2001, the

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<sup>1</sup> The 83 investigations reviewed did not include investigations that arose as a result of information disclosed on license/certificate applications or background checks. When these investigations are combined with complaint investigations, the Board reports that it takes an average of nine to ten months to complete an investigation.

Board had approximately 1,750 open investigations, including hundreds of investigations that were initiated prior to 2000. For example, 122 investigations initiated in 1997 remain unresolved as of August 2001. The Board's long investigation time frames represent a risk to the public because nurses and CNAs under investigation can continue to practice for long periods without receiving appropriate discipline and addressing the identified problems.

In 1995, the Board received regulatory responsibility for investigating CNA complaints and certification applications. This increased the number of investigations it conducts, and affected the Board's ability to investigate complaints in a timely manner. In fact, of the approximately 1,750 open investigations as of August 2001, over 1,200 are related to CNAs. To help it complete the large number of open complaint investigations, the Board requested and received \$772,700 over fiscal year 2001 and fiscal year 2002 to hire nine additional investigators. However, seven of these investigator positions are temporary and will terminate after June 2002.

While the Board has hired additional investigative staff, it can take several other steps to improve its investigation timeliness. First, the Board should monitor the progress of its additional investigative staff to ensure that it eliminates as many open investigations as possible before it loses the seven temporary investigators. Second, the Board should develop and implement internal time frames for each stage of its investigation process. While it may take time for the Board to adhere to these time frames because of the large number of open investigations, the Board should, at a minimum, ensure that high-priority complaint investigations (those alleging patient harm) adhere to the established time frames. Further, the Board should generate monthly management reports to ensure that internal time frames are met and complaints are investigated in a timely manner. Finally, because the number of complaints ready for adjudication at each Board meeting will likely increase, the Board should consider options, such as dividing into two panels or subcommittees or meeting more frequently, to adjudicate these cases in a timely manner.

**Board Practices Restrict  
Access to Public Information  
(See pages 19 through 23)**

The Board does not provide appropriate access to public information regarding nurses and CNAs. Specifically, auditors posing as members of the public phoned the Board and requested information on five different licensees/certificate holders. Two auditors' requests were handled appropriately. However, in one instance, the Board failed to disclose to the auditor the nature of a pending complaint against a CNA. Further, another auditor was not informed of a nurse's dismissed complaint. Finally, one auditor was not able to obtain any complaint or disciplinary information despite phone calls and a visit to the Board's offices. Unimpeded access to public information about nurses and CNAs is an important regulatory board function as it helps consumers select competent and ethical professionals.

In addition, certain Board practices further impede consumers' access to public information. According to policy, Board staff must ask consumers for information such as their name, telephone number, and reason for requesting public information. While the Board has established this practice to protect the safety of nurses and CNAs because their home addresses may be considered public information if a business address is not provided, it may deter consumers from making public information requests. Further, the Board's automated phone system is difficult to navigate and does not provide easy access to the appropriate staff to handle consumers' requests.

**Other Pertinent Information  
(See pages 25 through 29)**

During the audit, other pertinent information was gathered in response to legislative inquiries concerning the Board's regulation of CNAs. The regulation of nursing assistants resulted from the federal government's 1987 Omnibus Reconciliation Act (Act). The purpose of the Act is to protect individuals in nursing homes and other federally funded long-term care facilities from improperly trained nursing assistants. The Act establishes certain minimum requirements for certifying and regulating nursing



assistants. To help offset some of the costs of regulating CNAs, the Act provides federal monies to states, but does not allow states to charge nursing assistants for certification costs.

Auditors' review of other states' CNA regulatory structures found that Arizona is 1 of 14 states that regulate CNAs through boards of nursing. Arizona adopted this regulatory structure because the Board already had established processes for licensing nurses that could be used for certifying nursing assistants. Other common regulatory models among the 50 states include health facility regulatory agencies, such as Indiana's Department of Health, Division of Long Term Care, or occupational licensing and regulatory agencies, such as Alaska's Division of Occupational Licensing, which licenses multiple occupations, from acupuncturists to public accountants.

While the Board initially struggled with the responsibility of regulating CNAs because of the increased workload, it has since received additional resources to help perform its regulatory responsibilities. For example, the Board has established a fee for optional CNA cards that show proof of current certification and has also received State General Fund monies to cover the expense of fingerprinting CNAs for certification background checks. In addition, the Board hired more investigators, although most are temporary positions, to assist it in completing its large number of open CNA-related investigations.

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# TABLE OF CONTENTS

	<u>Page</u>
<b>Introduction and Background.....</b>	<b>1</b>
<b>Finding I: The Board Should Improve the Timeliness of Its Complaint Investigations.....</b>	<b>11</b>
Slow Investigations Decrease Board’s Public Protection Efforts.....	11
Three Factors Affect Board’s Ability to Investigate Complaints In a Timely Manner.....	14
Changes Needed to Improve Investigation Timeliness and Reduce Number of Open Investigations .....	16
<b>Recommendations .....</b>	<b>18</b>
<b>Finding II: Board Practices Restrict Access to Public Information .....</b>	<b>19</b>
Providing Public Information Is an Important Part of a Regulatory Board’s Responsibilities.....	19
Board Needs To Provide More Complete Public Information.....	19
Board Should Provide Easier Access To Public Information.....	21
<b>Recommendations .....</b>	<b>23</b>

**TABLE OF CONTENTS (Concl'd)**

	<u>Page</u>
<b>Other Pertinent Information.....</b>	<b>25</b>
Regulating Certified Nursing Assistants.....	25
<b>Sunset Factors .....</b>	<b>31</b>

**Agency Response**

		<b>Items</b>	
Item 1	Licenses and Certificates Issued by the Board.....		2
Item 2	Complaint Priorities.....		4
Item 3	Open Investigations As of August 2001 By Year of Receipt.....		12
Item 4	Nursing Assistants' Duties.....		25

		<b>Table</b>	
Table 1	State Board of Nursing Statement of Revenues, Expenditures, and Changes in Fund Balance Years Ended June 30, 1999, 2000, and 2001 (Unaudited).....		7

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# INTRODUCTION AND BACKGROUND

The Office of the Auditor General has conducted a performance audit and Sunset review of the Board of Nursing (Board) pursuant to a June 16, 1999, resolution of the Joint Legislative Audit Committee. This audit was conducted under the authority vested in the Auditor General by Arizona Revised Statutes (A.R.S.) §41-2951 et seq.

## Board Responsibilities

Since its inception in 1921, the Board of Nursing has been responsible for regulating registered nurses (RNs) through licensure. In 1952, the Board's responsibilities were expanded when licensed practical nurses (LPNs) were added to the Board's regulatory responsibilities. In 1990, as a result of federal requirements, the Board received the responsibility for certifying nursing assistants (CNAs). This responsibility for CNAs was expanded in 1995, when the Board received statutory authority to regulate CNAs. Item 1 (see page 2) lists the primary licenses and certificates the Board is responsible for issuing. The Board offers additional credentials for RNs, including certification for advanced practice nurses, such as nurse practitioners and clinical nurse specialists, as well as prescribing privileges that allow advanced practice nurses to prescribe and dispense drugs or medication to patients.

The Board's mission is:

*"To protect the public health, safety, and welfare through the safe and competent practice of nursing and nursing assistants."*

**Item 1: Licenses and Certificates  
Issued by the Board**

- **Registered Nurse (RN):** RNs are professional nurses who have obtained an associate's or bachelor's degree in nursing or a diploma from a professional nursing program. Typical duties include observing, assessing, and recording symptoms, reactions, and progress; developing and managing nursing care plans; administering medications; assisting physicians during treatments or examinations; instructing patients in proper care; and supervising LPNs and CNAs.
- **Licensed Practical Nurse (LPN):** LPNs must complete a one-year practical nursing training program and provide care only under the supervision of an RN or licensed physician. Typical duties include taking vital signs, such as temperature and blood pressure; giving injections; and observing, recording, and reporting a patient's condition to his/her supervisor. However, LPNs cannot provide an assessment of the patient's condition.
- **Certified Nursing Assistant (CNA):** To become certified, nursing assistants must complete 120 hours of training. Typical duties include assisting patients with eating, dressing, bathing, and walking. A CNA may not perform any task requiring judgment based on nursing knowledge, such as administering medications.

The Board accomplishes this mission by performing a variety of functions, including:

- Issuing and renewing licenses and certificates to persons who practice nursing or act as nursing assistants and possess the required qualifications;
- Conducting investigations and hearings concerning unprofessional conduct or other violations of the Nurse Practice Act;<sup>1</sup>
- Disciplining violators; and
- Providing consumer information to the public.

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<sup>1</sup> The Nurse Practice Act consists of the Board's statutes and rules and governs the licensure and regulation of RNs, LPNs, and CNAs.

As of July 2001, the Board licenses approximately 47,300 RNs, including 2,350 RNs certified as advanced practice nurses, and 9,320 LPNs and certifies approximately 18,600 CNAs.

### **Statutory Licensure Requirements**

The Board's statutes contain the following general education and examination requirements for licensure as an RN or LPN or certification as a CNA:

- Graduating from an approved professional nursing, practical nursing, or nursing assistant program. These include schools or colleges that award degrees in professional or practical nursing and that are approved by the Board and/or are accredited by a national nursing accrediting agency. This also includes schools or nursing care facilities that issue certificates in nursing assistant training that are approved by the Board and/or are accredited by a national accrediting agency. Currently, there are 22 schools in Arizona offering degrees in professional and/or practical nursing and approximately 150 nursing assistant training programs.
- Passing an approved examination administered by a private testing company, or possessing an unrestricted license or certificate from another state, district, or territory with similar standards.

In addition to the general education and examination requirements, statute requires candidates for licensure or certification who have been convicted of one or more felonies to have completed the sentences for all felony convictions and received absolute discharge five or more years before they file an application with the Board.

### **Complaint Resolution**

The Board investigates and adjudicates complaints involving violations of the Nurse Practice Act, such as potential unprofessional conduct by nurses and CNAs. A.R.S. §32-1601 defines the

*Investigating and adjudicating complaints is a major Board responsibility.*

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actions that constitute unprofessional conduct for nurses and CNAs, including such things as any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public. When Board staff receive a complaint alleging that a nurse or CNA violated a provision of the Nurse Practice Act, they open an investigation. In addition, the Board investigates criminal and disciplinary histories of current license or certificate holders and applicants. Specifically, the Board conducts investigations when background checks reveal, or the nurse or CNA discloses, the presence of criminal activity or disciplinary action taken against a nurse's or CNA's license or certificate in another state.

**Item 2: Complaint Priorities**

**Priority 1:** Complaints that pose immediate danger to public safety and must be investigated immediately, including chemical use while on duty and all sexual allegations.

**Priority 2:** Complaints that are serious but pose less of a threat than priority 1 complaints. Includes allegations of abuse, negligence, and incompetence.

**Priority 3:** Complaints that pose little to no threat of harm to public safety.

Prior to beginning an investigation, the Board's executive director or associate director reviews complaints and assigns them an investigation priority. As seen in Item 2, a complaint can be assigned one of three different priority levels depending on the seriousness of the allegations, with priority 1 being the highest. An investigation includes obtaining a response to the complaint from the accused nurse or CNA; subpoenaing relevant records, such as employment, medical, or motor vehicle records; and interviewing the accused nurse or CNA, the complainant, and any pertinent witnesses. After the investigation is completed, the Board reviews the complaint and adjudicates it. At this time, the named nurse or CNA has the opportunity to address the Board. The Board votes to resolve each complaint using one of its statutory nondisciplinary or disciplinary options. The Board's nondisciplinary options for nurses and CNAs are:

- Dismissing the complaint; or
- Issuing a Letter of Concern.

If the Board votes to impose discipline, its options for nurses are:

- Issuing a Decree of Censure;
- Imposing a term of probation, which can include requirements for mental, physical, or psychological examinations, bodily fluids testing, or educational requirements;
- Imposing civil penalties; or
- Suspending or revoking the nurse's license.

The Board's disciplinary options for CNAs are:

- Imposing civil penalties; or
- Suspending or revoking the CNA's certificate.

In addition, as authorized by statute, the Board operates a confidential, nondisciplinary program for nurses with chemical dependencies, known as the Chemically Addicted Nurses Diversion Option (CANDO). If the Board receives a complaint against a nurse indicating that the nurse is chemically dependent, the nurse can voluntarily enter the CANDO program before an investigation is initiated. To participate in the CANDO program, the nurse must enter into an agreement with the Board that contains stipulations, such as participating in the program for at least three years, completely abstaining from alcohol and all other mind/mood-altering medications and controlled and/or addictive substances, and entering a Board-acceptable chemical dependency treatment program. While many nurses opt to participate in CANDO as a result of a complaint against them, they can also voluntarily enter the program even though no complaints have been filed.

### **Organization and Staffing**

The Board consists of nine governor-appointed members who serve five-year terms. Five of the members must be registered nurses, two members must be licensed practical nurses, and two members must represent the public.



In fiscal year 2001, the Board is authorized 53.8 full-time equivalent (FTE) positions. This includes nine investigator FTEs recently assigned to the Board to help it address its large number of open investigations, seven of which are two-year temporary positions (see Finding I, pages 11 through 18). Board staff also includes an executive director, an associate director responsible for operations, an associate director responsible for investigations, and several legal secretaries, licensing technicians, and other support staff.

### **Budget**

The Legislature establishes an expenditure limit on monies the Board collects and deposits in the Board of Nursing Fund. This fund contains revenues derived principally from the collection of licensure application and renewal fees. The Board deposits 90 percent of its revenues into the fund and the remaining 10 percent into the State's General Fund.

In November 2000, the Board requested that the Legislature appropriate additional monies from the Board's fund to allow it to hire additional investigators to help address its large number of investigations.<sup>1</sup> In response to this request, the Legislature appropriated \$772,700 from the Board's fund over fiscal years 2001 and 2002. This is enough to hire nine investigator FTEs. Table 1 (see page 7) illustrates the Board's actual revenues and expenditures for fiscal years 1999 through 2001.

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*The Board received additional money in fiscal year 2001 to hire more investigators.*

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<sup>1</sup> This request was made pursuant to a provision of the General Appropriation Act, which allows 90/10 boards to request an additional \$50,000 or 20 percent of the board's current fiscal year appropriation when faced with unanticipated costs. This allows boards to access monies from their funds without having to request a supplemental appropriation during the regular legislative session.

**Table 1**

**State Board of Nursing  
Statement of Revenues, Expenditures, and Changes in Fund Balance  
Years Ended June 30, 1999, 2000, and 2001  
(Unaudited)**

	1999	2000	2001
Revenues:			
Licenses, fees, and permits	\$2,111,536	\$2,322,432	\$3,247,968 <sup>1</sup>
Intergovernmental	408,608	436,159	209,700
State General Fund appropriation <sup>2</sup>		321,200	
Fines and forfeits	147,782	120,653	130,908
Other	186,411	236,105	198,380
Total revenues	<u>2,854,337</u>	<u>3,436,549</u>	<u>3,786,956</u>
Expenditures:			
Personal services <sup>3</sup>	1,295,358	1,640,785	1,831,238
Employee-related <sup>3</sup>	249,109	315,697	348,705
Professional and outside services <sup>4</sup>	283,642	430,648	447,456
Travel, in-state	24,180	12,977	19,379
Travel, out-of-state	5,542	13,397	16,362
Other operating	303,138	335,154	421,092
Equipment	<u>53,434</u>	<u>80,859</u>	<u>259,595</u>
Total expenditures	<u>2,214,403</u>	<u>2,829,517</u>	<u>3,343,827</u>
Excess of revenues over expenditures	<u>639,934</u>	<u>607,032</u>	<u>443,129</u>
Other financial sources (uses):			
Net operating transfers in (out)	(4,712)	(4,213)	98,731
Remittances to the State General Fund <sup>5</sup>	(264,587)	(274,395)	(367,277)
Total other financing uses	<u>(269,299)</u>	<u>(278,608)</u>	<u>(268,546)</u>
Excess of revenues expenditures and other financing uses	370,635	328,424	174,583
Fund balance, beginning of year	<u>1,933,297</u>	<u>2,303,932</u>	<u>2,632,356</u>
Fund balance, end of year	\$2,303,932	\$2,632,356	\$2,806,939

<sup>1</sup> Amount increased significantly from 2000 because the Board raised licensing fees when it extended licenses for registered nurses and licensed practical nurses to three years.

<sup>2</sup> The Board received a one-time State General Fund appropriation in 2000 to pay for fingerprinting certified nursing assistant applicants. As of June 30, 2001, the Board's unexpended \$90,179 is included in the end of year fund balance.

<sup>3</sup> Personal services and employee-related expenditures increased for nine new full-time equivalent (FTE) positions authorized by the Legislature in 2000 and another nine FTE positions in 2001.

<sup>4</sup> Professional and outside services for 2000 and 2001 include expenditures approved by the Legislature to purchase various automation services needed to link the Board's database file to its Web site, store applications on microfilm, and implement a document scanning system.

<sup>5</sup> As a 90/10 agency, the Board remits all of its administrative penalties and 10 percent of all other revenues to the State General Fund.

Source: Auditor General staff analysis of the Arizona Financial Information System *Revenues and Expenditures by Fund, Program, Organization, and Object*, *Trial Balance by Fund*, and *Status of Expenditures and Appropriations* reports for the years ended June 30, 1999, 2000, and 2001.

## **Audit Scope and Methodology**

Audit work focused on the Board's investigation and adjudication processes, public information practices, and regulation of CNAs. This performance audit and Sunset review includes findings and recommendations as follows:

- The Board needs to improve the timeliness of its complaint investigations (see Finding I, pages 11 through 18); and
- The Board needs to strengthen its public information policies and practices (see Finding II, pages 19 through 23).

In addition, this report contains an Other Pertinent Information section that provides information regarding the regulation of CNAs in Arizona (see pages 25 through 29).

This audit used a variety of methods to study the issues addressed in this report, including the following:

- To assess the timeliness of the Board's complaint investigations, auditors reviewed a random sample of 83 complaints that were presented to the Board for adjudication during fiscal year 2000. This sample included: 1) 30 dismissed complaints that met Board criteria for expedited adjudication and shortened investigation time frames; 2) 23 complaints that resulted in nondisciplinary Letters of Concern and also met Board criteria for expedited adjudication and shortened investigation time frames; and 3) 30 complaints that proceeded through the Board's full investigative and adjudication processes. Auditors' review of the latter group also assessed the quality of the Board's investigations and the appropriateness of the Board's adjudication practices.
- To determine whether the Board provides consumers with accurate and complete information about nurses or CNAs, including complaint histories, auditors posing as members of the public made five calls to the Board requesting information and compared the information provided to the Board's complaint records.

- To compare Arizona's regulation of CNAs to other states, auditors reviewed the CNA regulatory structures of all 50 states as reported in the *February 2001 National Council of State Boards of Nursing Directory of Nurse Aide Registries*. In addition, auditors researched the Web sites of eight states to verify the appropriate state agency regulating CNAs because the Directory was unclear.<sup>1</sup> Further, auditors contacted ten states representing the various regulatory structures to obtain further information on those structures.<sup>2</sup>

This audit was conducted in accordance with government auditing standards.

The Auditor General and staff express appreciation to members of the Board of Nursing, the executive director, and staff for their assistance throughout the audit.

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<sup>1</sup> The following eight state Web sites were researched to verify the appropriate state agency regulating CNAs: Delaware, Georgia, Illinois, Maine, Michigan, New Mexico, Tennessee, and Texas.

<sup>2</sup> The following 10 states were contacted because they were representative of the various CNA regulatory structures used throughout the 50 states: California, Florida, Indiana, Kentucky, Louisiana, Missouri, New Jersey, Oregon, Virginia, and Washington.

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## FINDING I

# THE BOARD SHOULD IMPROVE THE TIMELINESS OF ITS COMPLAINT INVESTIGATIONS

The Board of Nursing should take several steps to ensure that complaints are resolved in a timely manner. Extremely slow complaint investigations and a large number of open investigations decrease the Board's ability to protect the public. Additional CNA regulatory responsibilities, inadequate tracking of complaint investigation progress, and high turnover among its investigative staff have affected the Board's ability to conduct complaint investigations in a timely manner. Changes, such as developing internal investigation time frames and generating management reports, can help improve investigation timeliness.

### Slow Investigations Decrease Board's Public Protection Efforts

The Board's untimely complaint investigations decrease its ability to adequately protect the public from nurses and CNAs who violate nurse practice laws. Specifically, the Board took over 360 days to investigate over half of the cases auditors reviewed, while it currently has approximately 1,750 open investigations. These untimely investigations diminish the Board's public protection efforts.

***Board's investigation time frames are excessive***—Auditors' review of 83 complaints presented to the Board in fiscal year 2000 for adjudication found that many took several hundred days to complete.<sup>1</sup> Of the 83 cases reviewed, the Board's investigation times ranged from 32 days to 1,938 days, with over half of these

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*Board investigation time frames ranged from 32 to 1,938 days.*

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<sup>1</sup> The 83 investigations reviewed did not include investigations that arose as a result of information disclosed on license/certificate applications or background checks. When these investigations are combined with complaint investigations, the Board reports that it takes an average of nine to ten months to complete an investigation.

investigations taking longer than 360 days and 23 complaints requiring over 1,000 days to investigate. Even the most critical complaints often take too long to investigate. Auditors reviewed 4 complaints labeled as priority 1, which are deemed the most critical and usually involve patient safety issues, and found that 2 took over 270 days to investigate.

**Item 3: Open Investigations  
As of August 2001  
By Year of Receipt**

1996:	25 Cases
1997:	122 Cases
1998:	220 Cases
1999:	272 Cases
2000:	556 Cases
2001:	560 Cases

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*Board has approximately 1,750 open investigation cases as of August 2001.*

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The Board also has a large number of open investigations that have not been completed for several years. As of August 2001, the Board had approximately 1,750 open investigations, of which over 36 percent were opened prior to 2000.<sup>1</sup> As illustrated in Item 3, 25 investigations initiated in 1996 and 122 investigations initiated in 1997 remained unresolved as of August 2001. In addition, the Board reports that it typically receives hundreds of new cases for investigation each year, including complaints and license or certificate applicant background investigations. In fact, during fiscal year 2000, the Board reports opening over 2,200 new investigations.

Even when complaints are opened for investigation, they often sit for long periods of time during the investigation. Specifically, for the cases reviewed, auditors found significant time gaps where no investigative work was performed. For example:

- A nurse employed by a nursing home accused of failing to report patient abuse was under investigation for over three years. The Board received the complaint in July 1997 and sent a letter to inform the nurse of the investigation one month later. However, no further investigative work was conducted until the Board contacted the nurse in January 2000. Further, the Board did not subpoena pertinent records until February 2000. The case was finally resolved in September 2000, when the Board issued a nondisciplinary Letter of Concern.

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<sup>1</sup> This includes both complaint investigations and investigations that arose as a result of information disclosed on license/certificate applications or background checks.

- A nurse was under investigation for over four years as a result of an anonymous complaint alleging a substance abuse problem. The Board received the complaint in August 1995 and spoke with the nurse in November 1995 to inform her of the option of entering the Board's special program for chemically addicted nurses. However, no records were subpoenaed until February 1996, and it was not until over two-and-a-half years later, in September 1998, that any further investigative work was conducted. In March 1999, the complaint was reassigned to another investigator who finally completed the investigation and brought the complaint to the Board for adjudication in October of 1999. The Board voted to dismiss the complaint.

Successfully resolving complaints can be made more difficult by the fact that information needed to support allegations may become harder to obtain as time passes. Witnesses, as well as complainants and accused nurses and CNAs, forget details of the incidents, or move and do not provide updated contact information. For example, the Board did not conduct any investigative work on one case for almost four years. Once the investigator began working on the case, she had difficulty contacting the accused nurse. Eventually, the Board learned that the nurse had died.

***Untimely investigations lead to inadequate public protection—***

Because investigations take so long, certain nurses or CNAs with problems could continue to practice unchecked. While nurses and CNAs are under investigation, their licenses are not restricted. As a result, these individuals can continue to practice for long periods without receiving appropriate disciplinary action and without addressing the problems identified. In addition, the public is not informed of the Board's concerns with these nurses or CNAs and is open to possible substandard care for long periods. For example:

- In October 1995, the Board received a complaint that a psychiatric facility nurse sent a 17-year-old inmate with a history of recent suicide attempts back to his cell, without calling a psychiatrist and without instituting proper precautions. The inmate committed suicide within an hour of speaking with the nurse. The complaint also alleged that the nurse had al-



tered the inmate's medical chart. Despite the seriousness of these allegations, the Board took nearly four years to complete its investigation. In September 1999, the Board voted to place the nurse on probation for 36 months with stipulations that she could not work with children or adolescents and could not work in any psychiatric settings. However, during the course of the investigation, the nurse continued to work unrestricted for at least four different employers.

- In June 1996, the Board received a complaint that a nurse was administering medication without a doctor's orders and was disposing of unused narcotics without proper witnesses or documentation, as required by policy. During a lag in the investigation, a second complaint was received in March 1997 alleging that this nurse again failed to properly account for two doses of narcotics and that four doses of an anti-anxiety medication meant for her patients were missing during her shift. Additionally, during the investigation period, the nurse disclosed a shoplifting conviction on her license renewal application. Despite these two complaints, this case was not heard by the Board until October 1999, when it decided to place the nurse on an 18-month probation that required counseling and direct supervision.

### **Three Factors Affect Board's Ability to Investigate Complaints In a Timely Manner**

Three factors affect the Board's ability to conduct investigations in a timely manner. First, an increase in CNA regulatory responsibilities has resulted in an increase in the number of investigations the Board must conduct each year. In addition, Board staff do not track the progress of investigations to ensure they are completed in a timely manner. Finally, high turnover among investigative staff in fiscal years 1999 and 2000 further hampered the Board's ability to conduct timely investigations.

***Increased CNA regulatory responsibilities affect Board's investigation timeliness***—Changes in the Board's CNA regulatory responsibilities have contributed to its inability to investigate complaints in a timely manner. Specifically, in 1995, the Board

## ***Finding I***

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*Board's increased CNA responsibilities have increased its investigations workload.*

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became responsible for investigating complaints alleging violations of the Nurse Practice Act by CNAs. Further, in January 1999, the Board was given responsibility for conducting background checks on CNAs, as well as RNs and LPNs, and investigating issues arising from these checks, such as undisclosed criminal convictions. These expanded CNA responsibilities increased the number of investigations the Board conducts each year. In fact, the Board reports that the number of investigations it must conduct has tripled since 1995. Prior to the added CNA responsibilities, the Board reports that it received an average of 47 complaints for investigation each month. However, for fiscal year 2000, the Board reports that it received an average of 188 investigations arising as a result of complaints or licensing background checks each month. In addition, of the approximately 1,750 investigations open as of August 2001, over 1,200 are related to CNAs. (See Other Pertinent Information, pages 25 through 29, for more information on the Board's regulation of CNAs.)

***Board staff do not monitor investigation progress***—Board staff do not currently monitor the progress of its investigations to ensure that they are timely. Specifically, while the Board has specific procedures that investigators must follow when conducting investigations, there are no time frames attached. As a result, as seen in some of the previous examples, investigators may open an investigation by sending initial letters to the complainant and respondent, but then not work an investigation for months or even years because they receive other complaints that may be of higher priority or are having problems obtaining documents or locating respondents or witnesses. In addition, while the Board has a computer system that is designed to capture data on complaints and investigations, it does not currently provide management with accurate and complete information on the status of investigation. As result, most investigators do not enter data into the system. Aware of its computer problems, the Board requested and has received additional monies in fiscal year 2002 to update its computer system.

***Investigative staff turnover hampered timeliness***—Finally, significant turnover among investigative staff has affected the Board's ability to investigate complaints in a timely manner. In fiscal year 1999, 7 of the Board's 19 investigators left their posi-

tions. Further, while the Board received an additional 3 investigator positions in fiscal year 2000, giving it a total of 22 investigators, 4 of these positions were vacated during that fiscal year. According to Board officials, these vacancies create skill losses that often take 9 to 12 months of training to replace.

### **Changes Needed to Improve Investigation Timeliness and Reduce Number of Open Investigations**

The Board should take several steps to improve its investigation timeliness and reduce the number of open complaint investigations. Specifically, while the Board has completed an important step toward reducing the number of open complaint investigations by requesting and receiving additional investigators, it should monitor the progress of its investigators to ensure that its complaint investigation goals are met. In addition, the Board should develop internal time frames for each stage of the investigative process and take steps to ensure that its computer system can generate reports to help it better oversee and monitor its complaint investigations. Finally, the Board should consider options for ensuring that it can adjudicate the additional complaints in a timely manner.

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*Board received additional monies for seven temporary and two permanent investigator positions.*

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**Monitor progress of additional investigation resources**—The Board should monitor its progress in using the additional investigative resources it obtained to help it address its numerous open complaint investigations. In fiscal year 2001, the Board requested and the Legislature granted additional funding for more investigators to assist the Board in completing its large number of open investigation cases. Specifically, the Legislature approved \$271,700 for fiscal year 2001 and \$501,000 for fiscal year 2002 from the Board’s fund to pay for nine additional investigator FTEs. However, seven of these additional FTEs are only temporary, two-year positions. To make the best use of these temporary staff, the Board has implemented an informal plan, including performance goals, to help it reduce the number of open complaint investigations. This plan includes using these staff to assist the Board’s existing investigative staff in resolving current investigations. To ensure that this plan is effectively carried out, and to eliminate as many open complaint cases as possible be-

fore June 30, 2002, when it will lose the seven temporary investigators, the Board should monitor its progress in meeting the performance goal of having each new investigator complete at least ten investigations each month.

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*Board should develop time frames to help ensure it can complete investigations in a timely manner.*

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***Develop internal time frames for each stage of the investigation process***—The Board should establish internal time frames for each phase of its investigation process to help ensure timely investigations. Creating deadlines for different phases of the process could assist the Board in ensuring that cases are not unattended for extended periods. When developing these internal time frames, the Board should ensure that the number of days from complaint receipt to adjudication is no longer than 180 days. One hundred eighty days is a reasonable amount of time to investigate and adjudicate complaints based on auditors' review of complaint investigation and adjudication time frames used by other health regulatory boards.

Until the Board eliminates the numerous complaint investigations currently open, it may be difficult for Board staff to make certain all investigations meet implemented time frames. However, the Board needs to establish time frames and, at a minimum, make certain that all priority 1 cases meet them.

***Ensure data management system provides for investigation monitoring***—The Board should ensure that changes to its computer software are made and include the capability to generate accurate reports that management can use to monitor the status of open investigations. Once these computer system changes are completed, the Board should generate monthly management reports to help it track investigation timeliness by ensuring that the internal time frames for each stage of the investigative process are met.

***Consider options for adjudicating complaints in a timely manner***—Because the nine additional investigators will likely increase the number of cases requiring adjudication, the Board may need to adopt alternative complaint resolution methods to ensure that it can address the increased workload. Currently, the Board meets every four to six weeks for two full days and is able to resolve all complaints that have completed investigations. During March, April, and May 2001, the Board addressed an av-

erage of 160 investigative cases and other adjudication matters during each meeting. To help it address complaints in a timely manner, the Board has implemented time-saving measures, such as mass dismissal of complaints that it determines to be without merit. However, now that the Board's new investigators are expected to complete at least 10 investigations each to bring to the Board for adjudication at each Board meeting, the number of cases the Board will need to address could increase by as many as 90 cases each month. In fact, during its June 2001 meeting, the Board was presented with 357 cases, including investigations and other items requiring Board action, but had to postpone taking action on 58 cases because it did not have sufficient time to address them. Therefore, if the Board determines it cannot resolve all investigated complaints in a timely manner, it should consider additional adjudication options. For example, the Board could divide into two panels or subcommittees to review complaints or meet more frequently to address the increased number of complaints that will be brought before it.

### **Recommendations**

1. The Board should monitor the progress made by its additional investigator FTEs toward meeting performance goals.
2. The Board should establish internal time frames for each phase of its investigations, with the total number of days from complaint receipt through adjudication being no longer than 180 days.
3. While working to clear its open investigations, the Board should ensure that, at a minimum, all priority 1 investigations adhere to the established investigation process time frames.
4. The Board should generate management reports that track the status of open complaint investigations.
5. The Board should consider options, such as dividing into two panels or subcommittees to review complaints or meeting more frequently, in order to adjudicate in a timely manner the increased number of complaints likely to be brought before it.

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## FINDING II

# BOARD PRACTICES RESTRICT ACCESS TO PUBLIC INFORMATION

The public does not have appropriate access to information regarding nurses and CNAs. Auditor test phone calls found that the Board was inconsistent in its provision of public information about licensees and certificate holders because its policies and procedures are not clear as to how staff should respond to public information requests. In addition, certain Board practices, such as asking consumers for their name and phone number, as well as the manner in which phone calls are routed, impedes consumers' access to public information. Therefore, the Board should strengthen its policies to clarify what information can be provided to consumers and should eliminate its restrictive practices.

### **Providing Public Information Is an Important Part of a Regulatory Board's Responsibilities**

One important part of a regulatory board's responsibilities is providing information that allows the public to make informed decisions about utilizing the services of licensees or certificate holders regulated by the board. For example, by informing the public of the disciplinary actions taken against licensees or certificate holders, boards assist consumers in selecting competent and ethical professionals. Public records laws were developed in part to help ensure that boards make this necessary information available.

### **Board Needs to Provide More Complete Public Information**

The Board's inconsistent practices impede consumer access to public information. Specifically, auditor test calls to the Board

resulted in varied responses, with some auditors being able to obtain appropriate information about nurses and CNAs while others were given incomplete information. To ensure that consumers consistently have appropriate access to public information about nurses and CNAs, the Board should strengthen its public information policies and practices.

**Auditor tests found the Board's public information practices varied**—Five auditors posing as members of the public phoned the Board and requested information on five different licenses/certificate holders. While two of the auditors' requests for information were appropriately handled by the Board, the Board did not fully disclose all available public information to the other three auditors. In one case, the Board refused to provide information on the general nature of a pending investigation. In another case, the Board failed to inform the auditor that a nurse with a letter of concern was the subject of a dismissed complaint.

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*The Board's response to calls requesting public information varied.*

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Finally, another auditor was unable to obtain any complaint or disciplinary information regarding a nurse, despite phone calls and a visit to the Board's offices. Specifically, one auditor was told that complaint and disciplinary information could not be provided over the phone and an appointment must be made to view the nurse's records at the Board's offices. After unsuccessfully attempting for two weeks to make an appointment to view the records, the auditor went to the Board's offices. The auditor was first informed that the Board would not release the information she was requesting and was then told she could not see the file; rather, she could only get copies of the nurse's file at a cost of \$.50 per page.

**Strengthen public information policies and practices**—To help ensure consumers have access to all public information, the Board should strengthen its policies to detail the information that will be made available to the public and then train staff on how to properly respond to public information requests. The Board's current public information policies and procedures are unclear regarding how public information requests on dismissed or closed complaints and disciplinary histories should be handled. Therefore, the Board should strengthen its policies and ensure information is provided on nurses or CNAs with dismissed or

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*Board should clearly define what information can be made public.*

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closed complaints, including the number and nature of dismissed complaints and the nature and resolution of closed complaints. Other state agencies and boards have developed written policies to make this information available by phone. For instance, the Board of Psychologist Examiners has policies requiring staff to provide the public with information over the telephone regarding the number and nature of both dismissed and pending complaints, and the resolution of closed complaints.

### **Board Should Provide Easier Access to Public Information**

The Board should also take steps to make public information more accessible to consumers. Currently, the Board's policy of asking consumers for personal information, as well as the manner in which the Board routes phone calls, hinders the public's access to information about nurses and CNAs. The Board should eliminate these restrictive practices to provide consumers with easier access to public information.

***Certain Board practices impede consumer access to public information***—Currently, the Board has two particular practices that impede consumers' access to public information on nurses and CNAs. Specifically:

- **Board staff question consumers**—According to policy, Board employees are required to obtain descriptive information about all callers requesting public information on licensees or certificate holders. Specifically, the policy states that the caller's name and information, such as the phone number and reason for the public information request, should be recorded by the Board employee handling the call. While the Board has implemented this policy in order to protect nurses' and CNAs' safety because home addresses are considered public information when business addresses are not provided, it could serve to discourage public requests for information. Auditor test calls confirmed this practice when four of the five auditors were asked for the reasons they were requesting public information.



The Board should eliminate its policy requiring that staff ask consumers to provide their names and other descriptive information. To address safety concerns, the Board should ensure that nurses and CNAs are informed as to what information is considered public, including the fact that home addresses are considered public information when business addresses are not provided.

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*Board's automated phone system impedes access to public information because it is difficult to navigate.*

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- **Board's phone system is difficult to use**—The Board's phone system further impedes consumers' access to public information. While the Board uses an automated phone system for routing phone calls, it is difficult to navigate, making it hard for callers to speak with Board staff. Specifically, the automated phone system does not contain an option clearly intended and labeled for the general public to inquire about a nurse's or CNA's record with the Board. Auditors had to place several calls to the Board before they were able to speak to a Board employee. For the most part, auditors' calls were routed to a general voicemail box where they were instructed to leave a message and await a return call. Although one auditor did leave a message, she never received a response. This same auditor then had to make four separate calls to the Board on the same day to speak with a Board employee.

To ensure that consumers have proper access to Board staff who can handle their information requests, the Board should consider adding an option to its automated phone system to route the caller to a designated Board employee or adding additional phone lines to allow for proper routing of calls. In addition, the Board could consider establishing a customer service unit to handle the public's calls, including public information requests.

## **Recommendations**

1. The Board should strengthen its public information policies to guide staff in providing public information to consumers over the telephone and in person, including providing the number and nature of closed, dismissed, and pending complaints and disciplinary actions.
2. The Board should train staff on how to appropriately provide public information to consumers by phone and in person.
3. The Board should eliminate its restrictive policies requiring staff to obtain the names and other descriptive information of consumers requesting public information.
4. The Board should ensure that nurses and CNAs know what information is considered public, including the fact that home addresses are considered public information when business addresses are not provided.
5. The Board should develop and implement a plan to route public calls, such as adding a public information option to its automated phone system, adding additional phone lines, or establishing a customer service unit to handle consumer information requests.

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## OTHER PERTINENT INFORMATION

During the audit and in response to legislative inquiries, other pertinent information was gathered regarding the appropriateness of the Board of Nursing regulating certified nursing assistants.

### Regulating Certified Nursing Assistants

In response to federal requirements, the State began regulating certified nursing assistants (CNAs) in 1990. While the federal government established minimum standards for regulating nursing assistants, Arizona expanded its CNA regulation requirements. Regulation by the Board of Nursing is one of three primary CNA regulatory structures employed by the 50 states. Although the Board has struggled with this responsibility in the past, its years of experience in certifying nursing assistants and current resource levels should enable it to more efficiently and effectively manage this responsibility in the future.

Since 1990, the Board of Nursing has been responsible for certifying nursing assistants in the State. As illustrated in Item 4, nursing assistants provide a wide variety of personal care services through daily contact with patients under medical care and long-term care facility residents. The Board approves training programs, maintains a register of CNAs, conducts background checks on certification candidates, and investigates complaints against CNAs.

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*The Board has been responsible for certifying nursing assistants since 1990.*

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#### **Item 4: Nursing Assistants' Duties**

Nursing assistants provide assistance with personal care such as:

- Bathing
- Dressing
- Walking
- Meal Preparation
- Feeding

These nursing-related services are provided to patients in facilities and to individuals in their own homes.

## **Other Pertinent Information**

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During fiscal year 2000, the Board reports receiving 3,963 applications for certification and over 1,000 complaints against CNAs. Further, during that same year, the Board adjudicated 323 cases that resulted in 111 disciplinary actions against CNAs. As of July 2001, there are approximately 18,600 CNAs listed in the register.

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*A federal act requires all states to certify nursing assistants working in federally funded long-term care settings.*

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**Federal and state requirements for CNA regulation**—The regulation of nursing assistants resulted from the federal government’s 1987 Omnibus Reconciliation Act (Act). Through this Act, the federal government intended to protect individuals in nursing homes and other federally funded long-term care settings from improperly trained nursing assistants. In addition to requiring states to certify nursing assistants working in Medicare-certified long-term care facilities, the Act specified several minimum certification requirements.<sup>1</sup> Specifically, the Act requires that 1) nursing assistants working in federally funded long-term care facilities receive a minimum of 75 hours of standardized education; 2) states maintain a registry of nursing assistants who have obtained this training; and 3) the states investigate complaints of abuse, neglect, or misappropriation of nursing home residents’ property. To help offset the costs of regulating CNAs, the Act provides federal monies to the states. In fiscal year 2001, the Board received approximately \$365,000 from the federal government to regulate CNAs. However, the Act does not permit states to charge a fee to nursing assistants in order to become certified.

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*Arizona’s nursing assistant certification and regulatory requirements are more strict than the federal minimum requirements.*

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Arizona has established certification and regulatory requirements for nursing assistants that are more strict than those required by the federal government. Specifically, Arizona nursing assistants must obtain at least 120 hours of standardized education in order to qualify for certification. In addition, the State has the authority to investigate and take disciplinary action against certified nursing assistants who violate any provisions of Arizona’s Nurse Practice Act. Finally, Arizona nursing assistants seeking certification must submit to a criminal background check, and the Board must deny certification to individuals with

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<sup>1</sup> Medicare-certified long-term care facilities include nursing homes, home health agencies, and hospice agencies. The federal government mandates that these facilities utilize CNAs.

felony convictions who have not received an absolute discharge from the convictions five or more years prior to applying for certification.

**Nursing boards one of three primary CNA regulatory structures**—Auditors’ review of CNA regulation in each of the 50 states found that it is not unusual for CNAs to be regulated through boards of nursing, health facility regulatory agencies, or occupational licensing and regulatory agencies. Through this review, the following three predominant regulatory structures were identified:

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*Arizona is 1 of 14 states that regulate CNAs through boards of nursing.*

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- **Boards of Nursing**—In addition to Arizona, 13 other states regulate CNAs through boards of nursing. While some of these boards are responsible for maintaining only their state’s CNA registry, many others, such as Arizona’s and Oregon’s Board of Nursing, are responsible for certifying applicants, investigating complaints, and approving training programs. A benefit of regulating CNAs through boards of nursing is that nurses and CNAs typically work together closely. Further, boards of nursing already have an established system for licensing and regulating similar professionals. Additionally, the career track for CNAs leads some to become LPNs or RNs and having them regulated by the same board makes the licensing transition easier.
- **Health Facility Regulatory Agencies**—Twenty-nine states regulate CNAs through agencies that also regulate health facilities, including long-term care facilities. For example, Indiana regulates CNAs through its Department of Health, Division of Long-Term Care. An advantage of regulating CNAs through this model is that the facilities these agencies regulate typically employ CNAs. Therefore, these agencies have experience in regulating the settings CNAs work in and have knowledge of CNA duties and practices. In addition, these agencies typically have extensive experience with federal programs and contracts.
- **Occupational Licensing and Regulatory Agencies**—Finally, five states regulate CNAs along with all other regulated occupations or all other medical occupations. For example, Alaska regulates CNAs through its Division of Occu-

pational Licensing, which also regulates occupations ranging from acupuncturists to public accountants.

**Board improving its ability to effectively regulate CNAs**—While Arizona’s Board of Nursing initially struggled with the responsibility of regulating CNAs, it has received additional resources that should allow it to more effectively manage the program. When Arizona expanded its nursing assistant certification and regulation requirements, the Board reports that its workload expanded greatly and it did not have sufficient resources to properly address this increase. Specifically, in 1995, the Board received authority to investigate complaints alleging violations of the Nurse Practice Act. In addition, in 1998, the Board was given responsibility for conducting background checks on CNAs and investigating issues arising from these checks, such as undisclosed criminal convictions. As a result of these expanded duties in addition to other factors, the Board was unable to conduct timely investigations of complaints against CNAs as well as nurses (see Finding I, pages 11 through 18). Further, the Board’s costs to certify and regulate CNAs were higher than the federal monies it was receiving for performing that function, and the Board did not receive increased revenues to correspond to the increase in its regulatory responsibilities.

However, the Board has addressed some of its CNA regulation challenges which, according to a Board official, should enable it to better manage its CNA responsibilities within a year. Specifically:

- **Board received additional investigation resources**—In fiscal year 2001, the Board requested and the Legislature approved additional funding from the Board of Nursing Fund for the Board to hire additional investigators to help eliminate its large number of investigations. The Board now has nine investigators who specialize in CNA-related investigations, although four are temporary positions that will terminate in June 2002. In contrast, the Board had only one investigator specializing in CNA cases prior to 1997.
- **Board received additional monies**—The Board has also received additional monies to help offset its CNA regulatory costs. In 1997, the Board added a \$40 fee for an optional card

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*The Board has received additional resources to help it better manage its CNA responsibilities.*

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### ***Other Pertinent Information***

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that CNAs can purchase to carry as proof of current certification. Other nonappropriated monies, including these fees, provide over \$341,000 of the Board's approximately \$1.1 million in CNA-related funding for fiscal year 2000. Further, the Board received a \$320,000 General Fund appropriation during fiscal year 2000 to finance fingerprinting charges for required background checks. The Board will also receive \$132,000 in General Fund appropriations during both fiscal years 2002 and 2003 for CNA fingerprinting.



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## SUNSET FACTORS

In accordance with A.R.S. §41-2954, the Legislature should consider the following 12 factors in determining whether the Arizona State Board of Nursing (Board) should be continued or terminated.

**1. The objective and purpose of establishing the Board.**

The Board was established in 1921 and its mission is to protect the public's health and welfare by overseeing and ensuring the safe practice of nurses and nursing assistants. To accomplish this mission, the Board established goals addressing educational standards, the licensing and regulation of nurses and nursing assistants, the approval of nursing and nursing assistant programs, and the provision of a nondisciplinary program for chemically dependent nurses.

In support of the Board's mission and goals, the following essential functions are carried out:

- **Licensing**—The Board licenses and certifies approximately 75,000 individuals, including registered nurses, licensed practical nurses, and certified nursing assistants. In addition, the Board approves and oversees nursing and nursing assistant training programs.
- **Investigation**—The Board has the authority to investigate complaints against nurses and CNAs from the public and on its own initiative. The Board also conducts background checks on new applicants for licensure or certification.
- **Adjudication**—The Board conducts hearings to resolve violations of the Nurse Practice Act by nurses and CNAs.

- **Public Information**—The Board provides information to the public on nurses and CNAs.

**2. The effectiveness with which the Board has met its objective and purpose and the efficiency with which it has operated.**

The Board performs many of its responsibilities efficiently and effectively, but could improve its performance in other areas. Specifically, the Board issues licenses and certificates in a timely manner to qualified candidates. In addition, the Board actively monitors Nurse Practice Act violators to ensure they are fulfilling all stipulations of their disciplinary agreements. The Board also operates a program to assist chemically addicted nurses to facilitate their rehabilitation and recovery. Further, auditors' review of 30 complaint investigations presented to the Board for adjudication in fiscal year 2000 found that the Board took appropriate disciplinary action when violations of the Nurse Practice Act were substantiated, and issued Letters of Concern when violations were not substantiated but the Board had concerns about a nurse's conduct.

However, the Board needs to improve its efficiency and effectiveness by investigating complaints in a timely manner. Specifically, the audit found that factors, such as an increase in workload, have hampered the Board's ability to investigate complaints in a timely manner. To improve its investigation timeliness, the Board should develop time frames for each stage of its investigation process and generate management reports on the status of open investigations. Further, the Board should monitor its plan for eliminating the large number of open investigations using recently acquired additional investigator positions (see Finding I, pages 11 through 18).

**3. The extent to which the Board has operated within the public interest.**

The Board has operated in the public interest in some areas, but can improve in others. Specifically, the Board appropriately allows complainants to participate in all aspects of the complaint adjudication process. The Board also publishes quarterly newsletters, which provide information on the Board's most recent disciplinary actions against nurses and CNAs as well as information on pertinent Board issues. This information is also available on the Board's Web site. Additionally, the Board sets aside time at its meetings to address questions from the public, including visiting nursing students.

However, the Board's public information policies and practices should be strengthened to ensure that consumers have appropriate access to public information on nurses and CNAs. Specifically, the Board's policy is unclear as to how public information requests on dismissed or closed complaints and disciplinary histories should be handled. Therefore, the Board should strengthen its policies to outline what records and information should be provided in response to public information requests on nurses or CNAs with dismissed, pending, or closed complaints, including the number and nature of dismissed complaints and the resolution of closed complaints. Further, the Board should eliminate its policy requiring that staff ask consumers to provide their names and other descriptive information when requesting public information and simplify telephone access to Board staff who can handle public information requests (see Finding II, pages 19 through 23).

**4. The extent to which rules adopted by the Board are consistent with the legislative mandate.**

The Governor's Regulatory Review Council (GRRC) analyzed the Board's five-year rule review report in August 1997 and determined that the Board had adopted most of the rules required by statute. However, GRRC found that

18 of the Board's rules were inconsistent with statute, including the Board's rules addressing licensing time frames. The Board has since amended its rules regarding licensure and certification time frames and licensure requirements. However, changes to rules regarding training program approval and regulation have not yet been made. The Board's rules are due for review again in August 2001.

**5. The extent to which the Board has encouraged input from the public before adopting its rules, and the extent to which it has informed the public as to its actions and their expected impact on the public.**

According to the Board, it has encouraged public input in drafting its proposed rules. For example, the Board seeks input from stakeholder groups such as the Arizona Nurses Association. The Board also posts its hearing agendas, which include time that has been set aside for public input on rules, on its Web site and publishes notices regarding proposed rule changes in its newsletter. Further, the Board sends letters regarding proposed rule changes to various stakeholders, such as nursing executives, who may be interested in the proposed changes.

Additionally, the Board has complied with the State's open meeting laws by posting public meeting notices at least 24 hours in advance at the required location, making agendas available to the public, maintaining meeting minutes, and having the required statement of where meeting notices will be posted on file with the Secretary of State.

**6. The extent to which the Board has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has sufficient statutory authority and disciplinary options to investigate and adjudicate complaints. However, the Board is unable to investigate complaints in a timely manner because of its increased workload dur-

ing the past several years due to its expanded CNA regulatory duties, inadequate monitoring of complaint investigation progress, and the high turnover of investigative staff that it experienced in 1999 and 2000. Specifically, a review of 83 complaint investigations found that investigation time frames ranged from 32 days to 1,938 days, with over half the cases taking at least 360 days to investigate. While the Board has added investigative staff to help address the large number of open complaints, it should also establish investigation process time frames and generate management reports that would enable greater oversight of open investigations (see Finding I, pages 11 through 18).

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

A.R.S. §41-192 authorizes the Attorney General's Office to prosecute actions and represent the Board. Four assistant attorneys general currently represent the Board.

**8. The extent to which the Board has addressed deficiencies in its enabling statutes which prevent it from fulfilling its statutory mandate.**

Numerous changes have been made to the Board's statutes in recent years, some of which have enhanced the Board's ability to fulfill its statutory mandate. For example:

- Laws 2001, Chapter 101 enacted a nurse licensure compact, allowing RNs and LPNs licensed in other compact states to practice in Arizona without obtaining an Arizona license, beginning in July 2002.
- Laws 1999, Chapters 221 and 229 gave the Board authority to impose civil penalties on CNAs and suspend their certificates. Additionally, legislation passed

changing the two-year renewal of RN/LPN licenses to a four-year renewal period.

- Laws 1998, Chapter 84 gave the Board the authority to require fingerprints and criminal histories of all nurse licensure applicants. Further, the general requirements for licensure or certification were increased by requiring the Board to deny licensure or certification to individuals with felony convictions who have not received an absolute discharge from the conviction five or more years prior to applying for licensure or certification.
- Laws 1997, Chapter 140 gave the Board the authority to issue nondisciplinary Letters of Concern to CNAs.

For the 2002 legislative session, the Board plans to request changes to the Nurse Practice Act. For example, because of the enactment of a nurse licensure compact in 2001, the Board would like to make changes to the Nurse Practice Act to align it with the compact's language.

**9. The extent to which changes are necessary in the laws of the Board to adequately comply with the factors listed in the Sunset law.**

Based on audit work, no legislative changes are recommended.

**10. The extent to which termination of the Board would significantly harm the public health, safety, or welfare.**

Terminating the Board would harm the public's health, safety, and welfare because the Board is responsible for licensing, investigating, and adjudicating complaints against RNs, LPNs, and CNAs. Without the Board's regulatory activities to ensure educational and competency standards, the public could be subject to untrained and unskilled nursing practices. Currently, all 50 states regu-

late the nursing practice and federal regulations mandate that the State maintain a register of CNAs.

- 11. The extent to which the level of regulation exercised by the Board is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The audit found that the current level of regulation exercised by the Board of Nursing is appropriate.

- 12. The extent to which the Board has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

The Board has made use of private contractors to perform certain services. For example, the Board contracts with a private company to administer its CNA certification exam. Additionally, the Board contracts for its computer support, maintenance, and Web site needs. Finally, the Board contracts with a firm to manage the production and distribution of the Board's newsletter. Currently, there do not appear to be any further opportunities to contract services.



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# **AGENCY RESPONSE**

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**Jane Dee Hull**  
Governor

**Joey Ridenour**  
Executive Director

## *Arizona State Board of Nursing*

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September 7, 2001

Debbie Davenport, Auditor General  
State of Arizona  
Office of the Auditor General  
2910 N. 44<sup>th</sup> Street, #410  
Phoenix, Arizona 85018

Enclosed is the Arizona State Board of Nursing response to the sunset performance audit completed August 31, 2001. As requested, a formal response to each recommendation contained within the revised preliminary report is provided.

We have valued an external review of our effectiveness and efficiency as well as citing accomplishments over the past five years. On behalf of the agency, we wish to thank the Auditor General and staff for their professionalism when analyzing the overall performance of the Board of Nursing. We stand ready to provide you with an implementation status report as requested.

For the Board,

Joey Ridenour, RN MN  
Executive Director

## **Summary Response to Performance Audit**

### **Arizona State Board of Nursing (Report Highlights)**

The number of open complaints is approximately 1,750 cases of the 9,839 total cases received at the Board from January 1996 to August 2001. In 2000, a three-year analysis of completed investigations identified approximately 67% of the cases investigated resulted in no discipline being imposed by the Board and 33% resulted in disciplinary action for violations of the Nurse Practice Act. The Board has approved policies over the past three years to improve utilization of investigative resources by focusing on conduct assessed to be high risk or harm to the public. Cases considered to be no or low public risk are now resolved through policies and processes adopted by the Board; i.e. Case Disposition Criteria, Summary Letters of Concern and Triage Criteria for Opening Investigations.

The 83 complaint investigations listed represent 2% of the 2,052 cases finalized in fiscal year 2000. The average cycle times for all 2,052 investigations for all categories is: RN/LPN 9 months and Certified Nursing Assistants 10 months.

The Board performance in tracking complaints and cycle times has been in place since 1997. Effective management oversight is evidenced by a 60% increase in cases to the Board i.e. monthly average of 95 cases in 1997 to 160 cases 2001. In 1997, the eight Nurse Consultants averaged 3.7 cases per month versus a 300% increase in fiscal year 2000 for an average of 11 cases per month.

Improved tracking and oversight of investigations was evidenced at the June 2001 meeting when the Board was presented with 357 cases (including investigations and other items requiring Board action), which is the largest volume of cases to be heard in the Board's eighty-year history. Due to time factors, fifty-eight cases were tabled to the meeting scheduled five weeks later and completed at that time.

In fiscal year 2000, the Board received four written reports on the investigations and progress made in reducing the cycle times. The Board continues to receive quarterly updates.

## **Finding I: The Board Should Improve the Timeliness of Its Complaint Investigations**

### **1. The Board should monitor the progress made by its additional investigator FTE's toward meeting performance goals.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. Performance standards for number of cases to Board per month were implemented over three years ago and all staff has been continuously monitored for achievement of results. The additional funding for seven temporary and two permanent positions approved by the Joint Legislative Budget Committee in FY 2001 was data driven and formulated based on the prior four-year data on investigator performance outcomes.

### **2. The Board should establish internal time frames for each phase of its investigations, with the total number of days from complaint receipt through adjudication being no longer than 180 days.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. The six-month goal for completion of investigations was set by the Board in February 2000 with continuous monitoring of progress to date. Average cycle times for RN/LPN investigations is 9 months and Certified Nursing Assistants is 10 months.

### **3. While working to clear its open investigations, the Board should ensure that, at a minimum, all priority 1 investigations adhere to the established investigation process time frames.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff.

### **4. The Board should generate management reports that track the status of open complaint investigations.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. Monitoring of open cases will include prescribed days for each phase of the investigative process but the focus will continue to be on results per investigator as cases are decided by Board action.

### **5. The Board should consider options, such as dividing into two panels or subcommittees to review complaints or meeting more frequently, in order to adjudicate in a timely manner the increased number of complaints likely to be brought before it.**

The finding of the Auditor General is agreed to and the audit recommendation was implemented before the recommendation was made. The Board increased the annual meeting days from 16 to 22 at the August 2001 Board Meeting.

## **Finding II: Board Practices Restrict Access to Public Information**

### **1. The Board should strengthen its public information policies to guide staff in providing public information to consumers over the telephone and in person, including providing the number and nature of closed, dismissed, and pending complaints and disciplinary actions.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff based on guidance from the Attorney Generals Office.

Public access to information is determined by the public records act, advice from the Assistant Attorney General and approval of these policies by the Board. To ensure licensee/certificate holders due process rights are protected, details of the investigative information is considered confidential and is not released to the public until the Board determines that a violation of the Nurse Practice Act has occurred and that discipline may be imposed and notices are served. Federal regulations prohibit finger print criminal history information obtained from the DPS/FBI from being secondarily released to the public. The Assistant Attorney General is developing a draft policy regarding public access to criminal history information, which will be presented to the Board for their approval.

The preferred route for the majority of the public who accesses public information is through the automated systems such as the Interactive Voice Recognition (IVR) and Board web site available 24 hours per day. The Board currently receives an average of 1050 phone calls daily or over 288,000 annually. Over 800 of the daily calls are members of the public directly accessing the Interactive Voice Recognition System by entering a social security or license/certificate number to determine if an individual has an active license or certificate, if there is a pending complaint or investigation and if there is any disciplinary action currently imposed.

The public may also access licensee/certificate holder disciplinary actions imposed since April 1996 through the Board's web site. Over 1050 RN/LPNs and approximately 460 Certified Nursing Assistants have had disciplinary actions taken during the last five years. This same public information is available through the quarterly publications of the Arizona State Board of Nursing Newsletters sent to over 90,000 RN/LPN/CNA/student nurses in Arizona.

The Board also notifies national disciplinary data banks of disciplinary actions taken to further protect the public. The data banks include the National Council of State Boards of Nursing Nursys Data Bank, Health Integrity Protection Data Bank and the National Practitioner Data Bank.

### **2. The Board should train staff on how to appropriately provide public information to consumers by phone and in person.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. Seventy per cent of the 1050 daily calls are routed through and automated system to verify licenses/certificates and determine if there is a complaint received or investigation pending.

**3. The Board should eliminate its restrictive policies requiring staff to obtain the names and other descriptive information of consumers requesting public information**

The finding of the Auditor General is agreed to and the audit recommendation has previously been implemented for all staff.

**4. The Board should ensure that nurses and CNAs know what information is considered public, including the fact that home address are considered public information when business addresses are not provided.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. This information was previously provided in the Quarterly ASBN Newsletter sent out to approximately 90,000 RN/LPN/CNA/Student Nurses in the state. The information will be repeated in future editions as well as application instructions.

**5. The Board should develop and implement a plan to route public calls, such as adding a public information option to its automated phone system, adding additional phone lines, or establishing a customer service unit to handle consumer information requests.**

The finding of the Auditor General is agreed to and the audit recommendation will be implemented for all staff. A consultant has already begun work to evaluate the phone system and submit recommendations for improving the board functions. We welcome suggestions to improve responding to the high volume of calls and making the system more customer friendly.



## **Other Performance Audit Reports Issued Within the Last 12 Months**

01-1	Department of Economic Security— Child Support Enforcement	01-11	Arizona Commission on the Arts
01-2	Department of Economic Security— Healthy Families Program	01-12	Board of Chiropractic Examiners
01-3	Arizona Department of Public Safety—Drug Abuse Resistance Education (D.A.R.E.) Program	01-13	Arizona Department of Corrections—Private Prisons
01-4	Arizona Department of Corrections—Human Resources Management	01-14	Arizona Automobile Theft Authority
01-5	Arizona Department of Public Safety—Telecommunications Bureau	01-15	Department of Real Estate
01-6	Board of Osteopathic Examiners in Medicine and Surgery	01-16	Department of Veterans' Services Arizona State Veteran Home, Veterans' Conservatorship/ Guardianship Program, and Veterans' Services Program
01-7	Arizona Department of Corrections—Support Services	01-17	Arizona Board of Dispensing Opticians
01-8	Arizona Game and Fish Commission and Department—Wildlife Management Program	01-18	Arizona Department of Correct- ions—Administrative Services and Information Technology
01-9	Arizona Game and Fish Commission—Heritage Fund	01-19	Arizona Department of Education— Early Childhood Block Grant
01-10	Department of Public Safety— Licensing Bureau	01-20	Department of Public Safety— Highway Patrol

## **Future Performance Audit Reports**

Arizona Department of Corrections—Arizona Correctional Industries

Department of Building and Fire Safety