
Sunset Evaluation Update: Nurses

A Report to the
Governor
and the
Legislature of
the State of
Hawai'i

Report No. 93-8
October 1993



THE AUDITOR
STATE OF HAWAII

The Office of the Auditor

The missions of the Office of the Auditor are assigned by the Hawaii State Constitution (Article VII, Section 10). The primary mission is to conduct post audits of the transactions, accounts, programs, and performance of public agencies. A supplemental mission is to conduct such other investigations and prepare such additional reports as may be directed by the Legislature.

Under its assigned missions, the office conducts the following types of examinations:

1. *Financial audits* attest to the fairness of the financial statements of agencies. They examine the adequacy of the financial records and accounting and internal controls, and they determine the legality and propriety of expenditures.
2. *Management audits*, which are also referred to as *performance audits*, examine the effectiveness of programs or the efficiency of agencies or both. These audits are also called *program audits*, when they focus on whether programs are attaining the objectives and results expected of them, and *operations audits*, when they examine how well agencies are organized and managed and how efficiently they acquire and utilize resources.
3. *Sunset evaluations* evaluate new professional and occupational licensing programs to determine whether the programs should be terminated, continued, or modified. These evaluations are conducted in accordance with criteria established by statute.
4. *Sunrise analyses* are similar to sunset evaluations, but they apply to proposed rather than existing regulatory programs. Before a new professional and occupational licensing program can be enacted, the statutes require that the measure be analyzed by the Office of the Auditor as to its probable effects.
5. *Health insurance analyses* examine bills that propose to mandate certain health insurance benefits. Such bills cannot be enacted unless they are referred to the Office of the Auditor for an assessment of the social and financial impact of the proposed measure.
6. *Analyses of proposed special funds* and existing *trust and revolving funds* determine if proposals to establish these funds and existing funds meet legislative criteria.
7. *Procurement compliance audits* and other *procurement-related monitoring* assist the Legislature in overseeing government procurement practices.
8. *Fiscal accountability reports* analyze expenditures by the state Department of Education in various areas.
9. *Special studies* respond to requests from both houses of the Legislature. The studies usually address specific problems for which the Legislature is seeking solutions.

Hawaii's laws provide the Auditor with broad powers to examine all books, records, files, papers, and documents and all financial affairs of every agency. The Auditor also has the authority to summon persons to produce records and to question persons under oath. However, the Office of the Auditor exercises no control function, and its authority is limited to reviewing, evaluating, and reporting on its findings and recommendations to the Legislature and the Governor.



THE AUDITOR STATE OF HAWAII

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465 South King Street, Room 500
Honolulu, Hawaii 96813

OVERVIEW

THE AUDITOR
STATE OF HAWAII

Sunset Evaluation Update: Nurses

Summary

We evaluated the regulation of nurses under Chapter 457, Hawaii Revised Statutes, and conclude that the public interest is best served by reenactment of the statute.

Nurses provide a wide range of services that promote, maintain, or restore health, or prevent illness. They administer prescribed medication and treatment to patients. Two categories of nurses are regulated: registered nurses and licensed practical nurses. About 12,700 registered nurses and about 3,200 licensed practical nurses are licensed in Hawaii. Of these, about 9,600 and 2,800, respectively, live in Hawaii.

The practice of nursing has significant potential for harm to the public's health, safety, and welfare, and Chapter 457, HRS, should be reenacted to continue the regulation of nurses. However, one provision of the statute cites gross immorality as a possible cause for the board to deny, revoke, limit, or suspend a nurse's license. There is no definition of gross immorality and we found no complaints or disciplinary actions resulting from gross immorality. Because of its vagueness and lack of relevance, the provision should be repealed.

We found that the licensing program could be simplified with a single educational standard for all applicants. The program could also be improved by checking on the history of applicants by endorsement and by removing the requirement for a photograph. We also found that the board could require nursing education programs to be accredited by the National League of Nursing (NLN) instead of having to accredit institutions itself. The board also needs to work more closely with the Regulated Industry Complaints Office (RICO) when handling disciplinary actions.

Recommendations and Response

We recommend that the Legislature reenact Chapter 457, HRS, to continue the regulation of nurses but repeal section 457-12(2), which allows disciplinary proceedings for gross immorality.

We also recommend that the Board of Nursing amend its rules to: (a) require a single educational standard for all applicants for licensure, (b) require a background check for all states in which an applicant for licensure by endorsement has been licensed previously, (c) cease requiring applicants to

submit a photograph, and (d) require all nursing education programs to acquire and retain accreditation from the NLN. We recommend further that the board and RICO meet to explain the needs and limitations under which both the board and RICO work in settlement agreements.

The board agrees with our recommendation to reenact Chapter 457, Hawaii Revised Statutes, to continue the regulation of nurses and amend the statute to repeal gross immorality as a basis for disciplinary action. The board further agrees with our recommendations to amend its rules to: (1) require a single educational standard for all applicants for licensure, (2) cease requiring applicants to submit photographs, and (3) require all nursing education programs to acquire and retain accreditation from the National League of Nursing. The board does feel that some amendments should first be made to Chapter 457, HRS, for consistency and uniformity. The board also agrees that it should work more closely with RICO and has begun communications with RICO.

The board does not agree with our recommendation that the board require a background check for all states in which an applicant for licensure by endorsement has been licensed previously. The board responds that it would be costly and time consuming without adding protection to the public.

Because of the crucial nature of the care nurses give to the ill and infirm, we stand by our recommendation that the board require a background check for all states in which an applicant for licensure by endorsement has been licensed previously. Verification of all prior licenses is a standard and fairly easy process that would further protect the public safety.

Marion M. Higa
State Auditor
State of Hawaii

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Sunset Evaluation Update: Nurses

A Report to the
Governor
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Legislature of
the State of
Hawaii

Submitted by

THE AUDITOR
STATE OF HAWAII

Report No. 93-8
October 1993

Foreword

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act of 1977, schedules regulatory programs for termination on a periodic cycle. Unless specifically reestablished by the Legislature, the programs are repealed. The State Auditor is responsible for evaluating each program for the Legislature prior to its date of repeal.

This report evaluates the regulation of nurses under Chapter 457, Hawaii Revised Statutes. It presents our findings as to whether the program complies with policies in the Sunset law and whether there is a reasonable need to regulate nurses to protect the health, safety, and welfare of the public. It includes our recommendation on whether the program should be continued, modified, or repealed. In accordance with Section 26H-5, HRS, the report incorporates in the Appendix the draft legislation to improve the regulatory program.

We acknowledge the cooperation of the Department of Commerce and Consumer Affairs, the Board of Nursing, and others whom we contacted during the course of our evaluation. We appreciate the assistance of the Legislative Reference Bureau, which drafted the recommended legislation.

Marion M. Higa
State Auditor

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Chapter 1

Introduction

The Sunset Law, or the Hawaii Regulatory Licensing Reform Act, Chapter 26H, Hawaii Revised Statutes, establishes policies for occupational licensing and schedules the repeal of licensing statutes according to a timetable. The law directs the State Auditor to evaluate each licensing statute prior to the repeal date and to determine whether the health, safety, and welfare of the public are best served by reenactment, modification, or repeal.

This report evaluates whether the regulation of nurses under Chapter 457, HRS, complies with policies for occupational licensing in the Sunset Law.

Background on Nurses

Nurses provide a wide range of services that promote, maintain, or restore health, or prevent illness. They administer prescribed medication and treatment to patients. Two categories of nurses are regulated: registered nurses (RN) and licensed practical nurses (LPN). About 12,700 registered nurses and about 3,200 licensed practical nurses are licensed in Hawaii.¹ Of these, about 9,600 RNs and 2,800 LPNs live in Hawaii.

Regulatory program

Chapter 457 governs the regulatory program for nurses. Nurses who wish to practice in Hawaii must be licensed according to standards set by the Board of Nursing that is administratively attached to the Department of Commerce and Consumer Affairs. The board is appointed by the governor and serves without compensation. It consists of nine members—five registered nurses, two licensed practical nurses, and two public members. Six members must be from Oahu and three must be from neighbor islands.

An executive secretary in the department's Professional and Vocational Licensing Division serves as staff to the board and administers its day-to-day operations. The department's Regulated Industries Complaints Office (RICO) mediates and resolves consumer complaints, pursues disciplinary action against licensees, and seeks court injunctions and fines against unlicensed persons. Final disciplinary decisions are made by the board following a recommended decision from the department's Office of Administrative Hearings.

Previous sunset evaluation

Our first sunset evaluation of nursing in 1984 recommended that Chapter 457 be reenacted to continue the regulation of nurses. We recommended that the Legislature remove the requirement that the board's executive secretary have knowledge of and experience in nursing because it was not enforced and did not appear necessary.² Because the statutory definition of nursing was nearly 30 years old and did not reflect current nursing practices, we recommended that the board develop recommendations to amend the definition of nursing in Chapter 457.

We also recommended that the board discontinue its practice of approving nursing faculty but consult with the University of Hawaii to develop reasonable criteria for nursing faculty. Given the large number of nursing licensees and the small number of complaints, we recommended that the Department of Commerce and Consumer Affairs monitor the impact of each license type on the compliance resolution fund to ensure an equitable relationship between fees and services. Finally, we recommended that the department ensure that the board is given adequate support.

Objectives of the Evaluation

This evaluation sought to determine whether the regulation of nurses complies with policies in the Sunset Law. Specifically, the objectives were to:

1. Determine whether there is a reasonable need to regulate nurses to protect the health, safety, and welfare of the public;
2. Determine whether current regulatory requirements are appropriate for protecting the public;
3. Establish whether the regulatory program is being implemented effectively and efficiently; and
4. Make recommendations based on findings in these areas.

Scope and Methodology

To accomplish these objectives, we reviewed the literature on nurses and their regulation, including statutes and rules on the occupation in Hawaii and the changes in these since our last sunset evaluation in 1984.

We reviewed complaints and other evidence of harm to consumers. We interviewed members of the Board of Nursing and personnel from the Department of Commerce and Consumer Affairs. We obtained information from state and national groups including the American Nurses Association, the Hawaii Nurses Association, the American Medical Association, the Hawaii Medical Association, and the

Healthcare Association of Hawaii. At the department, we reviewed licensing, enforcement, correspondence and other files. We also attended a board meeting.

Our work was performed from December 1992 through September 1993 in accordance with generally accepted government auditing standards.

Chapter 2

Findings and Recommendations

Most of the recommendations made in our 1984 sunset evaluation have been implemented. For example, the statutory definition of nursing in Chapter 457, Hawaii Revised Statutes, was rewritten to reflect current practices. The board no longer approves individual faculty members for nursing education programs in Hawaii. In consultation with the University of Hawaii, the board developed reasonable and relevant criteria for nursing education program faculty. Finally, DCCA improved services to the board. This progress, however, has been accompanied by new problems; the licensing program needs improvements in the statutes, the rules, and the administration.

Summary of Findings

1. Because nurses provide direct medical care, the State should continue to regulate nurses.
2. A statutory provision is unnecessary and should be removed.
3. The licensing program can be improved by creating a single educational standard, verifying the licensing history of out-of-state licensees, and removing the requirement for a photograph.
4. Board accreditation of nursing education programs is unnecessary.
5. The board wants more information for making settlement agreements.

State Should Continue to Regulate Nurses

The practice of nursing has significant potential for harm to the public's health, safety, and welfare. Chapter 457, HRS, should be reenacted to continue the regulation of nurses.

Nurses provide direct medical care with varying degrees of independence. Nurses who incorrectly administer treatment or treat patients incompetently can cause serious physical, emotional, and financial harm. Consumers receiving care from nurses generally are not in a position to judge the competence of these nurses or to evaluate the quality of their services.

All states and the District of Columbia license nurses. Every state requires applicants to have achieved certain levels of educational training and to pass examinations.

Statutory Provision is Unnecessary

While Chapter 457 should be reenacted to continue the regulation of nurses, it should be amended to remove an unnecessary provision dealing with “gross immorality.”

Chapter 457-12(2) cites “gross immorality” as a possible cause for the board to deny, revoke, limit, or suspend a nurse’s license. No further definition of “gross immorality” is provided in either the statute or the rules. No applicant has been denied a license because of gross immorality. Further, not one of the 113 complaints we reviewed at RICO cited “gross immorality” as a reason for the complaint. Because of its vagueness and lack of relevance, the provision should be repealed.

Program Can Be Improved

The licensing program could be simplified with a single educational standard for all applicants. The program could also be improved by checking on the history of applicants by endorsement, and by removing the requirement for a photograph.

Unnecessary curriculum requirements

Applicants who wish to be licensed must pass the national nursing examination sponsored by the National Council of State Boards of Nursing. To be eligible to sit for the examination, they must have graduated from an accredited nursing education program.

Applicants wishing to take the nursing examination in Hawaii are required to meet additional Hawaii education requirements even though they have graduated from an accredited nursing education program in another jurisdiction or have had their transcripts evaluated as equivalent to an accredited American nursing education program.

Curriculum requirements of nursing education programs in Hawaii generally exceed curriculum requirements of accredited nursing education programs in other states. The requirements specify eight units in the area of “Scientific Understanding,” nine units of “Social Sciences,” two units of “Professional Development and Responsibility,” and 32 units of “Nursing Practice and Allied Sciences,” 16 of which must be clinical laboratory experience. These additional requirements are not necessary. We compared these requirements with those of four other western states—Alaska, Arizona, Montana, and Washington. The other states require these subjects to be part of the curriculum, without requiring a specific number of units for each course.

Hawaii grants licenses by endorsement — that is, it grants licenses to nurses holding licenses issued by other states without further requirements. This means that applicants for licensure by endorsement

may be licensed in Hawaii without having to meet the additional curriculum requirements. There should be one educational standard, graduation from an accredited nursing education program, uniformly applied. Since the board accepts the educational standard applied by other jurisdictions when it licenses by endorsement, it should apply the same standard to those who take the examination in Hawaii.

***Additional
verification is needed***

The department does not check the complete licensing history of applicants who apply for licensure by endorsement. This is a significant problem due to the high number of drug complaints against nurses who have been licensed by endorsement. A review of RICO and DCCA files revealed that 81 percent (29 of 36) of all drug complaints against nurses involved those who had been licensed by endorsement.

Nurses who apply for licensure by endorsement only need to submit verification of their licensure in the state in which they were first licensed. Applicants must supply certain information including date and institution from which they graduated, examination results, date of original licensure, and information on any disciplinary complaints against them in that state. Information relating to the applicants' original license is verified by the department through follow-up with the state of original license.

Applicants must inform the board of any subsequent licenses in other states, but they are not required to send information to the board about their professional experience in these other states. In addition, the board does not ask applicants for information from other states in which they have been licensed.

The board does check with a national data bank of disciplined nurses. However, the usefulness of the data bank is limited. It is a voluntary program sponsored by the National Council of State Boards of Nursing, and it estimated that only two-thirds of all states participate. Also, there is no certainty whether states participating are current in reporting their cases.

Checking with all states where applicants have previously been licensed may provide better supplementary information to the Hawaii board. The board could require applicants to have reports sent by all states in which they have been licensed.

***Unnecessary
photograph***

Applicants are required to furnish a photograph of themselves with their application for licensure. This requirement could be considered discriminatory because it identifies the applicant's race, color, or national origin.

The purpose of this requirement is unclear. It is not used to identify applicants during the application process or for examinations. The licensing division already requires all applications for nursing licenses to be notarized. The division also requires applicants to furnish a picture ID when they take the examination. These procedures should be sufficient to verify the identity of the applicant and to ensure that no substitute takes the examination.

The department is reconsidering the requirement of photographs. We recommend that the department work with the board to delete the photograph requirement on the application.

Board Accreditation Is Unnecessary

Chapter 457 requires the Board of Nursing to accredit all nursing education programs in Hawaii and to survey them periodically. Administrative rules require the survey every four years.² The board currently does not conduct any surveys. It states that it has neither the time nor the resources to conduct accreditation surveys.

The board's rules allow accreditation by the National League of Nursing (NLN) to satisfy the board's accreditation requirements. The NLN accreditation process is rigorous, respected, and accepted in all states. NLN is officially recognized as the national accrediting agency for nursing education by the Council on Postsecondary Accreditation and by the U.S. Department of Education. In Hawaii, five of the seven nursing education programs are already NLN accredited. A sixth is presently working toward such accreditation.

Since NLN conducts accreditation of nursing education programs, we see no need for the board to be involved in accreditation surveys. The board should amend its administrative rules to require all nursing education programs in Hawaii to receive accreditation from the NLN by a specific date.

Inadequate Information From RICO

The board has the responsibility to discipline licensees. RICO investigates and prosecutes these matters for the board. In some instances, RICO works out a settlement agreement with the licensee. This agreement needs the approval of the board. Some board members feel they need more information from RICO to make sure their decisions are fair.

When seeking approval of settlement agreements, RICO does not provide the board with all the facts of the case. This is intended to preserve the due process rights of the respondent in the event the board

does not approve the settlement. In such an event, the matter goes to a hearing, after which the board decides on the hearing officer's recommended order.

Additionally, the board must accept the settlement agreement entirely or reject it. No changes are possible unless agreed to by the licensee. Some members of the board are not comfortable with having to approve a settlement without knowing all the facts. One board member said he voted against a settlement agreement solely because he wanted additional information.

The board's need for more detail is understandable. But RICO's due process concerns are also reasonable.

RICO has made great efforts to help the board understand the settlement agreement process and to explain why all details cannot be provided to them. However, RICO could give the board a more complete picture, generally, of the scope of disciplinary complaints against nurses and problems in this state. RICO gives the public information on the complaint history of specific nurses and others engaged in regulated occupations, including the type of allegation (e.g., negligence), the disposition of the case, and whether the matter is pending. The board could request the same kinds of public information from RICO. The board should work with RICO on what kinds of information it would find helpful in making decisions on settlements.

If the board is still unsatisfied with the level of information, it should be prepared to reject more settlement agreements in favor of a hearing process. Although this would result in delays in closing complaint cases, the board would have all the information which it feels it needs to make a decision.

Recommendations

1. The Legislature should reenact Chapter 457, Hawaii Revised Statutes, to continue the regulation of nurses. In reenacting the statute, the Legislature should consider amending it to repeal section 457-12(2), which allows disciplinary proceedings for gross immorality.
2. The Board of Nursing should amend its rules to:
 - a. Require a single educational standard for all applicants for licensure;
 - b. Require a background check for all states in which an applicant for licensure by endorsement has been licensed previously;

- c. Cease requiring that applicants submit a photograph; and
 - d. Require all nursing education programs to acquire and retain accreditation from the National League of Nursing.
3. The board and RICO should meet to explain the needs and limitations under which both the board and RICO work in settlement agreements.

Notes

Chapter 1

1. Hawaii, Department of Commerce and Consumer Affairs, *Summary/Geographic Report* (printout), February 24, 1993, p. 26.
2. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Nurses*, Report No. 84-4, Honolulu, January 1984.

Chapter 2

1. Hawaii, Legislative Auditor, *Sunset Evaluation Report: Nurses*, Report No. 84-4, Honolulu, January 1984.
2. Section 16-89-36, Hawaii Administrative Rules.

Responses of the Affected Agencies

Comments on Agency Responses

We transmitted a draft of this report to the Board of Nursing and to the Department of Commerce and Consumer Affairs on August 10, 1993. A copy of the transmittal letter to the board is included as Attachment 1. A similar letter was sent to the department. The response from the board is included as Attachment 2. The department did not submit a separate response.

The board agrees with our recommendation to reenact Chapter 457, Hawaii Revised Statutes, to continue the regulation of nurses. It also agrees that the statute should be amended to repeal gross immorality as a basis for disciplinary action. The board further agrees with our recommendations to amend its rules to: (1) require a single educational standard for all applicants for licensure, (2) cease requiring that applicants submit photographs, and (3) require all nursing education programs to acquire and retain accreditation from the National League of Nursing. The board does feel that some amendments should first be made to Chapter 457, HRS, for consistency and uniformity. The board also agrees that it should work more closely with RICO and has begun communications with RICO.

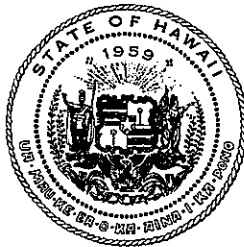
The board does not agree with our recommendation that it require a background check for all states in which an applicant for licensure by endorsement has been licensed previously. The board believes that: (1) the current application process is sufficient to disclose possible prior disciplinary problems, (2) having these background checks at the time of application would be ineffective and premature, (3) this would penalize approximately 97 percent of about 1,100 nurses who seek licensure by endorsement, (4) the cost of obtaining these verifications could be prohibitive and an unnecessary barrier to licensure, and (5) these verifications could take up to six months to obtain, during which time the nurses could be working under a temporary permit which would weaken the argument that this procedure would help protect the public safety.

Because nurses provide care that is critical to the ill and infirm, we stand by our recommendation that the board require a background check for all states in which an applicant for licensure by endorsement has been licensed previously. Verification of prior licenses is a standard and fairly easy process that would further protect the public safety.

ATTACHMENT 1

**STATE OF HAWAII
OFFICE OF THE AUDITOR**

465 S. King Street, Room 500
Honolulu, Hawaii 96813-2917



MARION M. HIGA
State Auditor

(808) 587-0800
FAX: (808) 587-0830

August 10, 1993

COPY

Ms. Genevieve L. Kinney, Chair
Board of Nursing
Department of Commerce and Consumer Affairs
Professional and Vocational Licensing Division
1010 Richards Street
Honolulu, Hawaii 96813

Dear Ms. Kinney:

Enclosed for your information are ten copies, numbered 9 to 18 of our draft report, *Sunset Evaluation Update: Nurses*. We ask that you telephone us by Friday, August 13, 1993, on whether you intend to comment on our recommendations. If you wish your comments to be included in the report, please submit them no later than Friday, September 17, 1993.

The Director of the Department of Commerce and Consumer Affairs, Governor, and presiding officers of the two houses of the Legislature have also been provided copies of this draft report.

Since this report is not in final form and changes may be made to it, access to the report should be restricted to those assisting you in preparing your response. Public release of the report will be made solely by our office and only after the report is published in its final form.

Sincerely,

Marion M. Higa
State Auditor

Enclosures

JOHN WAIHEE
GOVERNOR



ATTACHMENT 2

CLIFFORD K. HIGA
DIRECTOR

NOE NOE TOM
LICENSING ADMINISTRATOR

STATE OF HAWAII
PROFESSIONAL & VOCATIONAL LICENSING DIVISION
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
P. O. BOX 3469
HONOLULU, HAWAII 96801

September 17, 1993

RECEIVED

The Honorable Marion M. Higa, State Auditor
Office of the Auditor
State of Hawaii
465 S. King Street, Room 500
Honolulu, HI 96813-2917

SEP 17 3 31 PM '93

OFF. OF THE AUDITOR
STATE OF HAWAII

Dear Mrs. Higa:

Thank you for providing the Board of Nursing (Board) the opportunity to comment on the Sunset Evaluation Update on Nurses. The Board will comment on the recommendations as they appear on pages 9 and 10 of the report, as well as on statements in the report relative to those recommendations.

- "1. The Legislature should reenact Chapter 457, HRS, to continue the regulation of nurses. In reenacting the statute, the Legislature should consider amending it to:
 - a. Repeal section 457-12(2), which allows disciplinary proceedings for gross immorality."

The Board agrees that Chapter 457, HRS, should be reenacted to continue the regulation of nurses. The Board further agrees that gross immorality should be repealed as a basis for disciplinary action.

- "2. The Board of Nursing should amend its rules to:
 - a. Require a single educational standard for all applicants for licensure.
 - b. Require a background check for all states in which an applicant for licensure by endorsement has been licensed previously;
 - c. Cease requiring that applicants submit a photograph; and

- d. Require all nursing education programs to acquire and retain accreditation from the National League of Nursing."

The Board agrees that there should be amendments to the rules to address most of your recommendations but feel that amendments should first be made to Chapter 457, HRS, for consistency and uniformity.

- 2a. The Board agrees that a single educational standard for all applicants should be established.
- 2b. The Board did not form a consensus on the issue of requiring a background check for all states in which an endorsement candidate is licensed. Advocates for requiring a background check also strongly recommended that with the increased workload that additional funding be provided for a staff member.

Other members and the department feel that no substantive reasons have been provided for the background check. They have provided five reasons for their decision:

1. Currently, the application for licensure asks endorsement candidates if they have had prior or pending disciplinary action taken or being taken against them in another state. If so, they are required to have documents submitted by the appropriate state boards of nursing. Official documents are also required for convictions for crimes which sentences have not been expunged or annulled.
2. Approximately three quarters of the complaints filed against nurses licensed by endorsement occurred in other states several years after those nurses were licensed in Hawaii. Having background checks at the time of application would have been ineffective and premature.
3. 97% of approximately 1,037 endorsement candidates who apply annually will be penalized on the false premise that verifications from all states will help the Board to prevent the other 3% from being licensed. Moreover, the majority of the complaints against the 3% are filed years after a nurse has been licensed in Hawaii and therefore the issue is rendered moot.

4. The cost of having verifications from each state could be discriminatory against a nurse who travels from state to state as a flying nurse or who, for reasons such as job loss due to the economic recession or being part of a mobile military family, was forced to move from one state to another. The total cost of having verifications sent from each state board can be prohibitive and an unnecessary barrier to licensure.
 5. Time is a crucial factor to the majority of endorsement candidates. Having verifications sent from each state can take up to six months or more. Monitoring incomplete applications can be an administrative nightmare. If errors are made on the verification then additional time and monitoring must be allowed for these applications. The fact that these nurses can work with a temporary permit until the verifications are received weakens the argument for public safety.
- 2c. The Board is in agreement with deleting the personal photograph requirement for reasons that it is no longer necessary for enforcement purposes (which was its purpose) and to support the department's effort to streamline aspects of its document processing to enhance efficiency. The Board and the department feel that these are more relevant and accurate reasons to eliminate the photograph rather than unfounded inferences of potential discriminatory use.
- 2d. The Board is in agreement with requiring all Board-recognized nursing education programs to acquire and retain accreditation from the National League of Nursing (NLN). However, two programs on the island of Hawaii are currently recognized by the Board and are in the process of becoming NLN accredited. The Board suggests that your recommendation be modified by requiring all new programs to be NLN accredited and by providing a deadline for the two programs on the Big Island to become NLN accredited. The Board believes that statutory amendments need to be made to §§457-5, 457-11 and 457-14.
- "3. The board and RICO should meet to explain the needs and limitations under which both the board and RICO work in settlements agreements."

The Board agrees with your recommendation to meet with RICO.

The Honorable Marion M. Higa
September 17, 1993
Page 4

Cynthia Nakamura, Supervising Attorney of the Regulated Industries Complaints Office, expresses the department's view on this issue. "The auditor next suggests the Nursing Board needs more information in order to act upon the settlement agreements presented to it. However, the auditor also understands why information regarding a settlement agreement must by necessity be limited. It is for the very reasons expressed by the auditor that all the facts surrounding a settlement cannot be disclosed to the board. Therefore, it would not be feasible to let the board know everything about a case presented to it in the way of a settlement agreement. Should the board require clarification as to a settlement agreement, the board has the option of deferring action on the settlement agreement and inviting the parties (RICO attorney and respondent or respondent's counsel) to attend a board meeting in order to answer its questions. The board, however, may not engage in any ex parte communications, and therefore must have both parties present. Perhaps in the future, should the board have any questions, it may exercise the option of asking the parties to be present before making a ruling on a settlement agreement. Finally, the auditor recommends that the board and RICO meet in order to discuss the needs and limitations under which both operate for purposes of a settlement agreement. RICO is willing to meet with the board in order to clarify its role and to explain the settlement process. This would be beneficial to the board in understanding RICO's reasons for not making full disclosure of all the facts."

The Board appreciates the opportunity to comment on the findings and recommendations of this sunset evaluation report.

Very truly yours,

Hathleen Yokouchi

for Genevieve Kinney, Ph.D.
Chairperson

Proposed Legislation

SEVENTEENTH LEGISLATURE, 1994
STATE OF HAWAII

A BILL FOR AN ACT

RELATING TO NURSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Section 26H-4, Hawaii Revised Statutes, is
2 amended as follows:

3 1. By amending subsection (a) to read:

4 "(a) The following chapters are hereby repealed effective
5 December 31, 1994:

6 (1) Chapter 447 (Dental Hygienists)

7 (2) [Chapter 457 (Board of Nursing)

8 (3)] Chapter 457A (Nurse Aides)

9 [(4)] (3) Chapter 457B (Board of Examiners of Nursing Home
10 Administrators)

11 [(5)] (4) Chapter 461 (Board of Pharmacy)

12 [(6)] (5) Chapter 468L (Travel Agencies)"

13 2. By amending subsection (g) to read:

14 "(g) The following chapters are hereby repealed effective
15 December 31, 2000:

16 (1) Chapter 439 (Board of Cosmetology)

17 (2) Chapter 448F (Electrologists)

18 (3) Chapter 454 (Mortgage Brokers and Solicitors)

19 (4) Chapter 454D (Real Estate Collection Servicing Agents)

1 (5) Chapter 466 (Board of Public Accountancy)

2 (6) Chapter 467 (Real Estate Commission)

3 (7) Chapter 457 (Board of Nursing)."

4 SECTION 2. Section 457-12, Hawaii Revised Statutes, is
5 amended by amending subsection (a) to read as follows:

6 "(a) In addition to any other actions authorized by law,
7 the board shall have the power to deny, revoke, limit, or suspend
8 any license to practice nursing as a registered nurse or as a
9 licensed practical nurse applied for or issued by the board in
10 accordance with this chapter, and to fine or to otherwise
11 discipline a licensee for any cause authorized by law, including
12 but not limited to the following:

13 (1) Fraud or deceit in procuring or attempting to procure a
14 license to practice nursing as a registered nurse or as
15 a licensed practical nurse;

16 [(2)] Gross immorality;

17 (3)] (2) Unfitness or incompetence by reason of negligence,
18 habits, or other causes;

19 [(4)] (3) Habitual intemperance, addiction to, or dependency
20 on alcohol or other habit-forming substances;

21 [(5)] (4) Mental incompetence;

22 [(6)] (5) Unprofessional conduct as defined by the board in

- 1 accordance with its own rules;
- 2 [(7)] (6) Wilful or repeated violation of any of the
- 3 provisions of this chapter or any rule adopted by the
- 4 board;
- 5 [(8)] (7) Revocation, suspension, limitation, or other
- 6 disciplinary action by another state of a nursing
- 7 license for reasons as provided in this section;
- 8 [(9)] (8) Conviction, whether by nolo contendere or
- 9 otherwise, of a penal offense substantially related to
- 10 the qualifications, functions, or duties of a nurse,
- 11 notwithstanding any statutory provision to the
- 12 contrary;
- 13 [(10)] (9) Failure to report to the board any disciplinary
- 14 action taken against the licensee in another
- 15 jurisdiction within thirty days after the disciplinary
- 16 action becomes final;
- 17 [(11)] (10) Submitting to or filing with the board any
- 18 notice, statement, or other document required under
- 19 this chapter, which is false or untrue or contains any
- 20 material misstatement of fact; or
- 21 [(12)] (11) Violation of the conditions or limitations upon
- 22 which any license is issued."

1 SECTION 3. Statutory material to be repealed is bracketed.

2 New statutory material is underscored.

3 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

