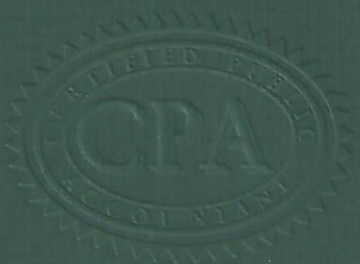


INTERNAL AUDIT OF THE
PEER ASSISTANCE PROGRAM
AT THE
TEXAS BOARD OF NURSING
REPORT NO: BON-021-001



MONDAY RUFUS & CO., P.C.
CERTIFIED PUBLIC ACCOUNTANTS AND ADVISORS



MONDAY RUFUS & CO., P.C.
Certified Public Accountants & Advisors

The Board Members
Texas Board of Nursing
Austin, TX

We have conducted an internal audit (audit) of the Peer Assistance Program at the Texas Board of Nursing (Board) as of June 4, 2021. The results of our audit disclosed that the Board has adequate controls in place to ensure reliability and integrity of information, compliance with policies, procedures, laws, and regulations; safeguarding of assets; economical and efficient use of resources; and accomplishment of established objectives and goals for operations. The report that accompanies this letter summarizes our comments.

We appreciate the courtesy and cooperation shown by the management of the Board during the course of this engagement.

Monday Rufus & Co., P.C.

June 4, 2021
Austin, Texas

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Executive Summary

Background Information

In 2007 the Board of Nurse Examiners was renamed the Texas Board of Nursing (Board) after the passing of HB 2426. The primary functions of the Board are to examine and license nurses and to enforce the rules and regulations applicable to the practice of nursing as established and defined by the Nursing Practice Act in order to protect the public. The Board's role in the protection of the public is to license qualified nurses, enforce the Nursing Practice Act, and to regulate the practice of professional nursing in Texas. The Board regulates over 410,000 nurses and 209 schools of nursing.

The Texas Peer Assistance for Nurses (Program) was approved by the Texas Board of Nursing (Board) under chapter 467, Health and Safety Code, to identify, monitor, and assist with locating appropriate treatment for those nurses whose practice is impaired or suspected of being impaired by chemical dependency, mental illness or diminished mental capacity. The program is required to report to the board, in accordance with its established and adopted policies and procedures, a nurse reported to the program to the program who is impaired or suspected of being impaired for chemical dependency, mental illness, or diminished mental capacity if the nurse was reported to the program by third party.

The criteria for Approved Peer Assistance Program include the following:

- Providing a statewide peer advocacy services to all nurses licensed to practice in Texas whose practice may be impaired by chemical dependency, certain mental illness, or diminished mental capacity.
- Having a statewide monitoring system that will be able to track the nurse while preserving confidentiality.
- Having a network of trained peer volunteer advocates located throughout the state.
- Having a written plan for the education and training of volunteer advocates and other program personnel.
- Having a written plan for the education of nurses, other practitioners, and employers.
- Ability to demonstrate financial stability and funding sufficient to operate the program.
- Having a mechanism for documenting program compliance and for timely reporting of noncompliance to the board.
- Must be subject to periodic evaluation by the board or its designee in order for the board to evaluate the success of the program.

The Board contracted with the Texas Nursing Foundation (TNF), a non-profit organization, to operate and provide the services required for program.

The program is required to collect and make available certain information to the Board. This includes, among others, number and sources of referral and number of active cases. In fiscal year 2020, the program had a total of 630 referrals and an average number of active cases of 626. Appendix 2 shows the number of Referrals by Referral Source, Referral Type and Nurse Type and Appendix 3 shows the average Active Cases in fiscal year 2020, respectively.

As of the date of our fieldwork, the TNF employed 11 employees that were dedicated to the program. This included the Program Director, Program Operations Coordinator, Case Managers, Intake Coordinator, and Case Manager Assistants. These employees have in excess of 50 years of cumulative experience working in the program. This is an average of approximately 5 years of experience in the program. The Program Director reports to the Chief Executive Officer of the Texas Nurses Foundation. For fiscal years 2020 and 2021 the General Appropriations Act authorized a budget of \$1,005,458, respectively.

Summary of Internal Audit Results

We gained an understanding of the Board's process in place for monitoring of the Texas Peer Assistance Program for Nurses to ensure that the established objectives and goals for operations were met. We selected a sample of cases and data and tested for accuracy, and compliance with policies, procedures, laws and regulations. Additionally, we reviewed the Board's updated processes for monitoring the Texas Peer Assistance Program for Nurses' program activities. No exceptions were noted during our testing.

There were no deficiencies detected in the audit of the Texas Peer Assistance Program processes that are significant to the objectives of this internal audit engagement. Any insignificant issues noted have been communicated to the management of the Board as required by Government Auditing Standards.

Detailed Observations

The primary objectives of the internal audit were:

- Reliability and Integrity of Information
- Compliance with Policies, Procedures, Laws, and Regulations
- Safeguarding of Assets
- Economical and Efficient use of Resources
- Accomplishment of Established Objectives and Goals for Operations

Internal Audit Objective 1: Reliability and Integrity of Information

There are input, processing, and output controls in place at the TNF to ensure reliability of data. We obtained an understanding of the process for generating the reports submitted by the TNF to the Board, selected a sample of data and traced to supporting documentation. No exceptions were noted as a result of our testing.

Internal Audit Objective 2: Compliance with Policies, Procedures, Laws, and Regulations

1. There are processes to ensure that the Board's legal team maintains documentation of review of contracts prior to execution. We reviewed the updated Contract Procurement and Management Book procedures and tested for compliance with the manual's policies and procedures and noted support that the Board's legal team reviewed contracts prior to execution.
2. There is also a process for ensuring verification of work eligibility for all individuals in the Program which includes using the E-Verify system. We selected a sample of TNF employees for compliance with the E-Verify requirements. No exceptions were noted.
3. The TNF undergoes an annual financial audit by an external Certified Public Accounting (CPA) firm. The most recent audit was for the year ended June 30, 2020. Based on our review of the audited financial statements, the opinion issued by that external CPA firm was unmodified.

Internal Audit Objective 3: Safeguarding of Assets

1. We reviewed the monitoring process conducted by the Board on the TNF contract and reviewed required reports and documents. The Board has a Contract Manager who uses a centralized contract management folder to keep all TNF contract documents, reports, contract correspondence, and other required documents pertaining to the Peer Assistance Program. We selected a sample of referrals and tested for specific attributes stipulated in Texas Administrative Code, Chapter 22. No exceptions were noted.
2. TNF grants computer network access to users on a need-to-know basis. Passwords are effectively used to control access to TPAPN computer resources. The TPAPN has a process in place to restrict access to TPAPN applications with the use of passwords. Passwords are not displayed during logon and contain a combination of letters, numbers, and special characters. Physical access to the TPAPN offices at the TNF is restricted and controlled via a keypad. There is anti-virus software on all computers. TPAPN is up to date with their security patches. There are adequate controls in place to maintain and secure TPAPN assets. The computer room is restricted and accessible only to

authorized personnel through the use of a keypad, and access is monitored. There are fire extinguishers and the computer room's temperature is controlled and monitored to ensure protection of assets. Mission critical data is backed up on a scheduled basis and stored offsite. Our audit tests in this area of the engagement indicated no deficiencies that are significant to the objectives of this engagement.

There is a documented Business Continuity Plan, to ensure continuation or resumption of critical functions, including TPAPN. The TPAPN's Case Management System is hosted by a third-party company. That system underwent a System and Organization Control (SOC2) examination for the period beginning October 1, 2019 and ending September 30, 2020. The report from that examination indicated no deficiencies that are significant to the objectives of this internal audit engagement.

Internal Audit Objective 4: Economical and Efficient use of Resources

Quarterly Reports and documents submitted by TNF are reviewed by the Contract Manager and Board staff to ensure accuracy, completeness, and to address any issues which may be presented in the Contract and Performance Monitoring Report by the Contract Manager at the Board Meetings. We selected a sample of referrals and tested for specific attributes stipulated in Texas Administrative Code, Chapter 22. No exceptions were noted.

Internal Audit Objective 5: Accomplishment of Established Objectives and Goals for Operations

The processes employed in managing the Texas Peer Assistance Program appear to be effective in ensuring that the Board's established objectives and goals for operations relating to the Texas Peer Assistance Program for Nurses are met. We gained an understanding of the processes in place and selected a sample of cases and data and tested for accuracy, and compliance with policies, procedures, laws and regulations. Additionally, we reviewed the Board's updated processes for monitoring the Texas Peer Assistance Program for Nurses' transactions. No exceptions were noted during our testing.

Appendix 1:

Entity: Texas Board of Nursing

Project: Follow-up on The Texas Peer Assistance Program for Nurses – State Auditor’s Office (Original Report: June 2019)

FISCAL YEAR: 2021

PRIOR FINDINGS/RECOMMENDATIONS (issued by the prior Internal Auditor)	CURRENT STATUS*	AUDITORS’ REMARKS
<p><u>Chapter 1</u></p> <p>Although the Board Performed Monitoring Processes for Its Contract With the Foundation, Significant Weaknesses in the Board’s Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract</p> <p>The Texas Board of Nursing (Board) performed monitoring processes for its Texas Peer Assistance Program for Nurses (Program) contract, including participating in meetings with the Texas Nurses Foundation (Foundation), ensuring receipt of certain deliverables, approving payments to the Foundation, and reviewing revenue received to fund the Program. However, the Board should address significant weaknesses in its contract monitoring processes to ensure that it adequately monitors the Foundation’s performance and analyzes the reports that the Foundation submits for the Program. The Board did not have documentation that it used those reports to inform its decisions related to the contract, and the Board did not have a process in place to verify the accuracy or completeness of the information that the Foundation submitted. Additionally, the Board’s monitoring of the contract was decentralized and not always sufficiently documented.</p> <p>Chapter 1-A:</p> <p>The Board Performed Monitoring Processes for Its Contract With the Foundation</p> <p>The Board performed monitoring processes for its contract with the Foundation, such as meeting regularly with Foundation staff, ensuring receipt of Program reports, reviewing and approving contract payments, and reviewing revenue received to fund the Program.</p> <ul style="list-style-type: none"> ▪ Meetings with the Foundation. During fiscal year 2018 and the first two quarters of fiscal year 2019, Board staff members met with Foundation staff on a regular basis. 		

▪ **Weekly meetings.** A Board staff member met weekly with Foundation staff to discuss how to process certain Program referrals and other Program-specific questions or concerns.

▪ **Monthly meetings.** The Board's Executive Director met with the Foundation's Chief Executive Officer monthly to discuss the Program. The Board asserted that funding for the Program was discussed in those meetings; however, the significant items discussed in those meetings were not documented, as required.

▪ **Quarterly Program Advisory Committee meetings.** A Board staff member attended the quarterly Program Advisory Committee meetings. Topics discussed at those meetings included community outreach related to the Program and updates such as staffing and Program changes.

Quarterly reports. The contract required the Foundation to report specific programmatic and financial information to the Board each quarter during the Board's fiscal year. While the Board had a process in place to ensure that it received quarterly reports from the Foundation, it could not provide documentation to support that it had a process to analyze the information in those reports to inform its contract-related decisions.

Payments to the Foundation. The Board had an adequate payment review process for its contract with the Foundation. All 17 payments tested were supported and accurately recorded in its financial accounting system. The Board also ensured that the total payments for fiscal year 2018 did not exceed the contract amount of \$1,005,458.

Revenue received to fund the Program. The Board had a process in place to monitor the surcharge fee revenue that it received from nursing licenses to determine whether it would generate sufficient fee revenue to fund the contract with the Foundation (see text box for additional information on surcharge fee revenue). As a result of this process, the Board transferred \$55,896 from its general revenue fund to the Program fund in fiscal year 2018 to cover an anticipated shortage in the surcharge fee revenue it was to collect for that year.

See Chapter 1-B for further details on the weaknesses identified with some of the monitoring processes discussed in this chapter.

Management's Response

Chapter 1

Management does not have any objection or concern regarding SAO recommendations for improving the Board's contract monitoring practices. However, Board Staff believes that the agency's past monitoring practices developed during a thirty-year contractual relationship with the Texas Nurses Foundation and TPAPN would better characterized as "low" risk, or lower. Particularly, because there was never any indications or evidence that TPAPN ever presented any significant contractual noncompliance issue in its history. Board Staff believes that SAO may have improperly characterized monitoring practices as weak merely because of a lack of compliance documentation rather than the visible evidence of compliance.

1A

SAO properly summarizes the Board's historic contract monitoring activities related to TPAPN. Board staff members have always engaged in wide-ranging and frequent interactions regarding the TPAPN program. These interactions included the Board's Enforcement Director weekly meetings with TPAPN related to program referrals, the Board Executive Director's monthly meetings with the Foundations Executive Officer, and Staff attendance at TPAPN's quarterly advisory committee meetings. Additionally, the Board would receive a quarterly reports developed by the Foundation regarding programmatic and financial information and those reports developed by Board staff concerning interactions with the program. These reports are published on the Board's website and the public is provided statutory notice of these reports in the Texas Register as standard agenda items to be presented to the Board at each regular scheduled quarterly Board meeting. TPAPN staff, and the involved Board Staff, were routinely in attendance and available at the Board's regular meetings to make the presentations or answer any questions regarding concerns with the program. SAO has stated that "while the Board had a process in place to ensure it received quarterly reports from the Foundation, it could not provide documentation to support that it had a process to analyze the information in those reports to inform its contract-related decisions." Staff takes issue with this observation. The information and documentation that Staff provided that demonstrated the monitoring activities outlined above and conducted by Board Staff with intimate knowledge of TPAPN operations would support the alternative conclusion that Board did maintain a process which informed its contract decisions.

Chapter 1-B :

Significant Weaknesses in the Board's Monitoring Processes Could Affect Its Ability to Effectively Monitor the Contract

Board did not have support that it used the information submitted by the Foundation in the quarterly reports to inform its decisions related to the contract, including funding for the Program.

Financial information. The contract requires the Foundation to submit financial information to the Board with the quarterly reports. As discussed in Chapter 1-A, the Board ensured receipt of those reports from the Foundation; however, there was no documentation to support that it used the information provided in those reports to inform its contract-related decisions. Based on the financial information submitted, the Program's cash balances increased from \$492,490 in fiscal year 2014 to \$766,750 at the end of fiscal year 2018. However, the Board did not have documentation that it analyzed that information and discussed the results of that analysis with the Foundation to determine the appropriate amount of funding required to operate the Program.

Statistical information. In addition, Title 22, Texas Administrative Code, Section 217.13, requires statistical information on the Program to be submitted quarterly to the Board for the purpose of evaluating Program success. While the Foundation submitted statistical information, the Board did not document whether it considered that information, such as participant totals, when determining Program success and the amount of Program funding. For example, for the fourth quarter of fiscal year 2018, the Foundation reported a total of 551 participants, which was 21 percent less than the 697 total participants reported for the fourth quarter of fiscal year 2017 (see Figure 1 in Chapter 3). However, the Board did not document whether it considered those participant totals when determining the amount of funding to provide to the Program. According to the contract, the Board could adjust the amount of funding it provides to the Foundation based on the total of Program participants.

Not having a process to analyze and consider the information the Foundation submits increases the risk that the Board may not (1) determine the appropriate amount of funding to meet Program needs; (2) comprehensively evaluate Program success and make informed contract-related decisions; and (3) identify noncompliance with the contract.

The Board did not perform a risk assessment or develop a monitoring plan to ensure compliance with key contract requirements.

A risk assessment and a monitoring plan should be completed to identify the contract requirements to be monitored, the monitoring methods, and those responsible for performing the monitoring. Both a risk assessment and a monitoring plan are required by the *State of Texas Procurement and Contract Management Guide*³; however, the Board did not perform a risk assessment or develop a monitoring plan for the contract with the Foundation. In addition, the Board did not develop an enhanced monitoring plan for that contract as required by Board policies (see text box for more information on enhanced monitoring).

While the Board performed monitoring activities as discussed in Chapter 1-A, developing and implementing an appropriate monitoring plan would help ensure that the Foundation is complying with key contract requirements. It also would help the Board identify and address potential issues.

The Board did not have specific, detailed contract management procedures to ensure that it consistently performed required contract management activities.

The Board developed a contract management handbook, as required by Texas Government Code, Section 2261.256(b). While the Board's Contract Procurement and Management Handbook provides overall principles for contract formation and monitoring, it does not include specific procedures for the Board's contract formation and monitoring processes. Documenting specific procedures for those processes is important to ensure that the Board's contracts are formed consistently and in compliance with all requirements and that contract monitoring is performed consistently throughout the duration of the contract. Additionally, the Board's Contract Procurement and Management Handbook does not include procedures to assess the risk of fraud, waste, and abuse, as required by Texas Government Code, Section 2261.256(a)(1).

Not documenting specific, detailed contract formation and monitoring procedures increases the risk that the Board may not (1) adequately develop or monitor its contracts and (2) comply with statutes, rules, and other applicable requirements.

The Board did not have a process in place to verify the accuracy or completeness of the information submitted quarterly by the Foundation.

The contract requires the Foundation to include specific information, including the number of Program participants, in its quarterly reports to the Board.

Accuracy. The Board did not verify the accuracy of the information that the Foundation submitted in the quarterly reports, as required by Texas Government Code, Section 2261.254. For example, the Board did not verify the accuracy of the reported numbers of participants, which the Foundation is required to report by nurse type (Registered Nurse or Licensed Vocational Nurse). For four of the five quarters tested, auditors identified errors in the new Program participant totals for the quarter that the Foundation reported to the Board. For all four of those quarters, the Foundation underreported participants for one or both nurse types (Registered Nurses and Licensed Vocational Nurses). Those underreporting errors were between 10 percent and 35 percent. In addition, for one of those quarters, the Foundation overreported the number of Registered Nurse participants by 4 percent.

Not verifying the accuracy of the information provided by the Foundation increases the risk that the Board could make contract-related decisions based on inaccurate information. Additionally, ensuring participant totals are accurate is important because that information is a performance measure reported to the Legislative Budget Board.

Completeness. The Board did not ensure that the quarterly reports included all information required by the contract (see text box for report requirements). Specifically, for all quarterly reports submitted during fiscal year 2018 and the first quarter of fiscal year 2019, the Foundation did not submit 3 of the 20 required items to the Board. Those 3 items were:

- The number of self-referred cases closed and the reason(s) for closure.
- Progress on meeting short- and long-range goals
- Historically underutilized business (HUB) usage and, if applicable, reasons for not meeting HUB usage goals.

Not verifying the completeness of the information that the Foundation submits prevents the Board from

ensuring that it has all necessary information to adequately monitor the Foundation's performance.

The monitoring activities for the contract with the Foundation were decentralized.

While the Board completed contract monitoring activities, those monitoring activities were decentralized. As discussed in Chapter 1-A, multiple individuals at the Board performed monitoring activities for the contract with the Foundation. However, the Board did not have support that the results of those monitoring activities were documented. In addition, although a contract manager was assigned in January 2018, the Board did not have support that those results were communicated to that contract manager (see text box for contract manager responsibilities). The effective date for the contract audited is September 1, 2017.

In addition, the Board did not have a master contract file for the contract with the Foundation. According to the State of Texas Procurement and Contract Management Guide, the contract manager is responsible for maintaining a master contract file of records produced for the duration of the contract. The guide also requires contract-related meetings to be substantiated in writing and maintained as part of the contract file, and the documentation should include the meeting date, time, and a summary of topics discussed including pending action items and decisions made. Maintaining contract documentation in a master contract file would decrease the risk of required documentation being lost, misplaced, or inadvertently deleted/removed.

Because there was a decentralized monitoring process and the results of monitoring activities were not documented and communicated to the assigned contract manager, there is an increased risk that the Board may not identify and/or resolve contract performance issues or noncompliance. For example, auditors identified instances in which the Foundation did not fully comply with contract requirements. Specifically, the Foundation did not:

- Submit an annual report to the Board.
- Include 2 of the 11 required items in its policies and procedures.
- Provide documentation to the Board to support that it had an ongoing plan for program evaluation.

The Board had not previously identified those instances of noncompliance with contract requirements.

<p>Auditors identified enforcement weaknesses in the Board’s monitoring of its contract with the Foundation.</p> <p>The Board did not have a documented process to develop a corrective action plan for the Foundation to address any potential contract noncompliance. Not having a process in place to develop a corrective action plan increases the risk that the Board may not adequately enforce contract terms.</p> <p><u>Recommendations</u></p> <p>The Board should:</p> <ul style="list-style-type: none"> • Ensure that it sufficiently documents its analysis of the information that the Foundation submits and how it uses that information in its decisions related to the contract, including for Program funding. • Perform a risk assessment to determine which contract requirements to monitor and develop an appropriate monitoring plan. • Develop an enhanced monitoring plan when required. 	<p>I</p> <p>I</p> <p>I</p>	<p>Auditors reviewed the monitoring process conducted by the Board on the TNF contract and reviewed required reports and documents. The Board has a Contract Manager who uses a centralized contract management folder to keep all TNF contract documents, reports, contract correspondence, and other required documents pertaining to the Peer Assistance Program. Quarterly Reports and documents submitted by TNF are reviewed by the Contract Manager and Board staff to ensure accuracy, completeness, and to address any issues which may be presented in the Contract and Performance Monitoring Report by the Contract Manager at the Board Meetings.</p> <p>Auditors reviewed the updated Accounting Manual (March 2020) contract procedures. The fiscal year 2020 Peer Assistance Program contract between the Board and TNF includes the Peer Assistance Program legislative contract compliance requirements such as:</p> <ul style="list-style-type: none"> - 22 TAC § 217.13 Peer Assistance Program - 25 TAC Chapter 451 Peer Assistance - Texas Health & Safety Code Chapter 467 Peer Assistance Programs - Texas Occupation Code 301.4106 PAP <p>Auditors reviewed the <i>Contract and Performance Monitoring Report</i> implemented by the Board to monitor the contract process with the Texas Nursing Foundation (TNF). The Contract and Performance Monitoring Report was developed as a requirement under 22 Texas Administrative Code §</p>
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<ul style="list-style-type: none"> • Ensure that it maintains a master contract file with sufficient documentation to support the monitoring activities performed for its contract with the Foundation. • Develop a process to enable the Board to implement a corrective action plan for any identified contract performance or noncompliance issues. <p>Management's Response <u>1B</u> SAO has concluded that there are "significant weaknesses" in Board's monitoring process. As outlined above, every aspect of the TPAPN program generally involved significant or routine interaction with a Board staff member. The Staff possessed subject matter expertise regarding the matter at issue and had a direct line to the Board's Executive Director. Further, the reports generated by TPAPN, the Foundation and Staff were presented to the Board quarterly. Staff would submit that the absence of any documentation or discussion of those informative reports, particularly when there are no significant contractual violations noted does not evidence an absence of process for analyzing information.</p>	<p>I</p> <p>I</p>	<p>Auditors determined that the Contract Manager maintained the centralized contract management file with sufficient documentation to support the monitoring activities performed by the TNF.</p> <p>Auditors reviewed the <i>Contract and Performance Monitoring Report</i> presented at the Board Meetings for FY 2020 by the Contract Manager. The <i>Report</i> serves as a documented review of the Quarterly Reports submitted by the TNF, TPAPN, for the 2020 Fiscal Year four quarters. The <i>Contract and Performance Monitoring Report</i> requires TNF to submit specified documentation to the Board to ensure compliance with contract terms. The Performance Monitoring Report has columns which list:</p> <ol style="list-style-type: none"> 1) <i>Source of Authority</i> Reference to contract section 2) <i>Contractor's Responsibilities</i> Description of responsibilities 3) <i>Bd Staff Responsible for Oversight</i> Department Name 4) <i>Documentation of Contractors Compliance</i> Documents required for compliance 5) <i>Board Comments</i>
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Financial information was analyzed in determining appropriate funding for the program. Prior to fiscal year 2018, the Board provided up to \$873,558 per fiscal year to support a peer assistance program. There has been incremental increases and decreases in the appropriations but the pre-fiscal year 2018 spending cap had been in place since September 1, 2013. The Board started requiring the peer assistance program to add an additional year of monitoring to LVN and RN licenses and 3 additional years to APRNs in accordance with best practices for nursing peer assistance programs. The program increased the staffing by 1.5 FTEs to continue to monitor the additional years for VNs/RNs and APRNs. Staff monitored the number of participants in the peer assistance program, but this decision focused on the quality of the program and national standards related to the increased monitoring.

SAO finds that “the Board did not perform a risk assessment or develop a monitoring plan to ensure compliance with key contract requirements” and that the “Board did not have specific, detailed contract management procedures to consistently perform required contract management activities.” Board Staff did perform significant monitoring activities previously described in the response and outlined in Chapter 1-A of the SAO report, and has developed and implemented Contract and Performance Monitoring Report that will document the effective management and ensure compliance with specific contract terms. This report will also serve as the Board’s enhanced contract monitoring plan for this contract. The quarterly and annual reports obtained from this monitoring tool will be used to help inform Board staff’s decisions as they relate to the contract and any payments related to the contract.

Although the Board’s Contract Procurement and Management Handbook includes a section on Risk Assessment and Management, Board staff will revisit its Handbook to include specific procedures to assess the risk of fraud, waste, and abuse. Additionally, while Board staff carefully ensures that each contract complies with statutes, rules, and other applicable requirements, Board staff will revisit its Handbook to provide more specific procedures for the Board’s contract formation and monitoring processes. However, Board staff asserts that it has been complying with contract procurement laws and the State of Texas.

SAO states that the “monitoring activities for the contract with the Foundation were decentralized.” The implication would be that the monitoring activities of the Board were ineffective. SAO concludes “there is an increased risk for being able to identify and/or resolve contract performance issues.” This implication and conclusion

mischaracterizes and ignores the intimate involvement with the program by informed Board Staff. As outlined in Chapter 1-B, Board Staff is actively involved with managing and overseeing the program, such as requiring the program to cooperate with performance and financial audits and to develop new flexible guidelines. Board Staff also participates in weekly meetings with the program and quarterly meetings with the Advisory Committee. These Staff make quarterly reports to the full Board and the Board's Executive Director also meets regularly with the Executive Director of the Texas Nurses Foundation.

The assigned Contract Manager was hired and assigned January 2018 and has developed and implemented Contract and Performance Monitoring Report that will document the effective management and ensure compliance with specific contract terms. This report will augment the Board's enhanced contract monitoring plan for this contract. The quarterly and annual reports obtained from this monitoring tool will be used to help inform Board staff's decisions as they relate to the contract and any payments related to the contract. Currently, the Contract Manager serves as the point of contact for communications related to the contract and is custodian of the master contract file.

SAO has stated that "the Board did not have a documented process to develop a corrective action plan for the Foundation to address potential contract noncompliance." Staff would agree that no formal documentation exists for develop of a corrective action plan but not with the SAO's conclusion that there is an increased risk that the Board may not adequately enforce contract terms. Although Staff has agreed with the recommendation, the Board does not agree that any breach of contract terms cannot be effectively enforced without one.

In summary, Staff would reiterate their opinion that the matters identified in Chapter 1-B would not rise to the rating of "high" risk at this time. Staff does not object with the recommendations of SAO as outlined in Chapter 1.

Auditor Follow-up Comment

The Board attempts to diminish the significance of the findings related to weaknesses in its contract monitoring processes. The State Auditor's Office acknowledged in this report the monitoring activities the Board performed for its contract with the Texas Nurses Foundation. However, the weaknesses identified during the audit are

significant and should be promptly addressed as they could impact the Board's ability to effectively monitor the contract to ensure that the Program is providing the necessary services to participants at an appropriate funding level required to operate the Program.

Although the Board had multiple opportunities to address the issues during the audit, it was unable to provide sufficient documentation to support that it had a process in place to analyze and consider information submitted by the Foundation in the quarterly reports to inform its decisions related to the contract, including funding for the Program. For example, the Program's total expenditures for fiscal year 2018 were \$937,736. As of August 31, 2018, the Program's cash balances totaled \$766,750. Those cash balances were equivalent to 82 percent of the Program's total expenditures for its fiscal year 2018.

The Board disagrees with the impact of the finding related to its decentralized monitoring activities for the contract with the Foundation. While the State Auditor's Office reported that multiple Board staff met regularly with the Foundation, the Board was unable to provide support that it documented or communicated the results of those meetings to the assigned contract manager.

Chapter 2

The Board Formed the Contract with the Foundation in Accordance with Most Applicable Requirements; However, It Should Strengthen Formation Processes

The Board formed the contract with the Foundation in accordance with most applicable requirements. However, it should strengthen its contract formation processes to ensure that it (1) includes specific, defined measures for program success in its contracts and (2) requires contractors to determine employment eligibility.

The Board formed the contract with the Foundation in accordance with most applicable requirements.

The Board included all essential clauses required by the *State of Texas Contract Management Guide, version 1.166*. In addition, the contract was appropriately approved by the Board's executive director and Board members.

While the Board asserted that its legal team reviewed the contract prior to its execution, as required by Board policies and procedures, it was unable to provide documentation to support that assertion. Ensuring that there is a documented legal review before it executes contracts, and enhancing that

review to include verification that all contract requirements are included, would help the Board demonstrate its compliance with the legal review requirement.

The Board did not develop and include specific, defined measures for Program success in its contract with the Foundation.

The scope of work for the contract with the Foundation did not include clearly defined measures of successful contract performance, such as the required amount of Program outreach activities or time frames for processing new participants. Including those would have helped the Board to develop an adequate monitoring plan to determine whether the Foundation was providing the expected quality of services to Program participants (see Chapter 1-B for the monitoring plan issues identified for the Board's contract with the Foundation). In addition, a lack of defined measures of successful performance increases the risk that the State's interests may not be protected.

The Board did not ensure that certain terms, such as verifying employment eligibility and Program administration requirements, were included in the contract and accurate.

Employment eligibility. The Board did not include in its contract with the Foundation a term requiring contractors to use the U.S. Department of Homeland Security's E-Verify system to determine the eligibility of all individuals employed during the contract term, as required by the Governor's Executive Order No. RP-80 (see text box for more information on the E-Verify requirement). Not requiring the Foundation to verify the work eligibility of its employees and subcontractors increases the risk that ineligible individuals could be employed under the contract.

Inaccurate and omitted contract requirements. The contract with the Foundation included inaccurate and outdated references to Texas Administrative Code and Texas Government Code requirements. Additionally, the Board did not ensure that Title 22, Texas Administrative Code, Chapter 217, which details Program administration requirements, was included in the contract. Not ensuring that its contract formation process includes verifying the accuracy and inclusion of all applicable requirements for which a contractor is responsible decreases the Board's ability (1) to identify contract noncompliance and (2) to enforce contract terms.

<p><u>Recommendations</u> The Board should:</p> <ul style="list-style-type: none"> • Ensure that it maintains documentation to support that its legal team has reviewed contracts prior to execution, as required by Board policies and procedures. • Develop and implement a process to ensure that its contracts include specific, defined measures for program success. • Ensure that all of its contracts include a requirement to verify work eligibility for all individuals involved, including using the E-verify system as required. • Ensure that contract formation procedures include a review to ensure that all contract requirements are accurate and included. 	<p>I</p> <p>I</p> <p>I</p> <p>I</p>	<p>Auditors reviewed the updated the Contract Procurement and Management Book procedures and tested for compliance with the manual’s policies and procedures to determine if documentation was maintained to support that its Legal team had reviewed contracts prior to execution.</p> <p>A review of the FY 2020 contract between the Board and the TNF included the statutory requirements regarding the peer assistance program. The contract’s statutory and legal authorities’ requirements were also referenced in the reporting sections of the TNF Quarterly Reports. Data collected assists Board management in determining other information that could be obtained from the program (i.e. number of nurses who signed Participation Agreements).</p> <p>Auditors selected and tested a sample of three (3) from a total of 11 TPAPN employees (FTEs) for compliance with the E-Verify requirements. No exceptions were noted.</p> <p>Auditors reviewed the updated Contract Procurement and Management Book contract procedures to determine that the contract requirements were included and accurate. The contract included references to the Legislative compliance requirements agreed to by both parties.</p>
<p><u>Management’s Response</u></p> <p><u>Chapter 2</u></p> <p><i>SAO has concluded that the Board formed the contract in accordance with most applicable requirements, but it should strengthen the formation process. Staff does not object to any SAO recommendation in this regard. Board Staff, however, does object to SAO’s statement that the Board was not able to document support for legal review of the contract prior to its execution.</i></p> <p><i>It is quite evident from the materials supplied by the Board, that before the contract was approved by the Board and executed by the Executive Director, the</i></p>		

Board's Legal Department was responsible for the development of the Request for Proposals and evaluation of responses. Further, the proposed contract and the Board report recommending its approval was prepared by the Legal Department and presented to the Board members by the General Counsel and staff Attorney before its execution with recommendation that the contract be approved. The omitted provisions or inaccurate citations identified by SAO do not indicate lack of legal review or, more importantly do not effect the enforceability of the contract or its substantive terms. The contract terms are enforceable as written, and it is clear as to which requirements the citations refer. Moreover, the contractor requirements delineated in the contract encompasses 22 Texas Administrative Code Chapter 217, as well as other requirements are specifically tailored to this contract and to the Board's needs.

In summary, Staff agrees with the recommendations of SAO outlined in Chapter 2.

Auditor Follow-up Comment

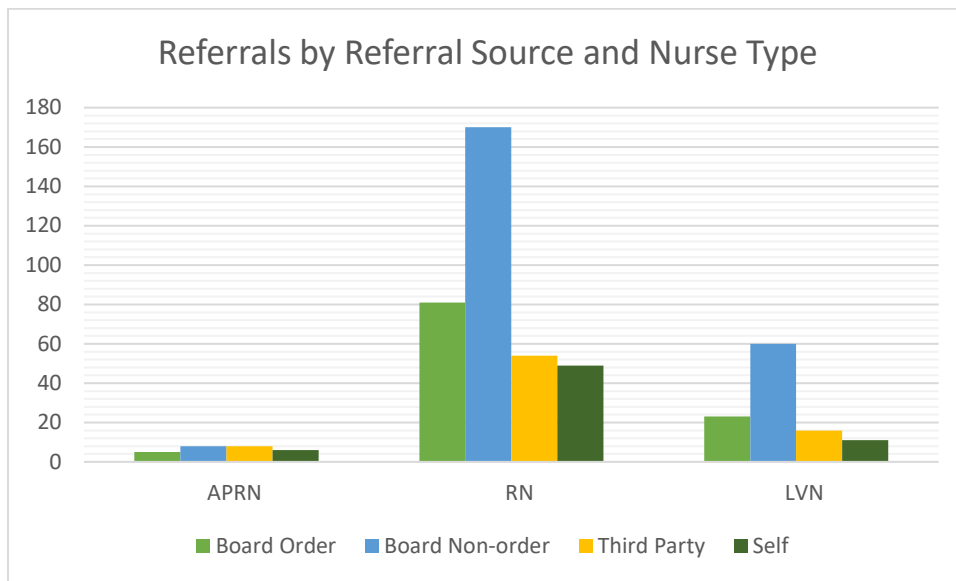
The Board disagrees with the finding that it was not able to provide documentation to support that its legal team reviewed the contract prior to execution. After a review of the documentation submitted by the Board, the State Auditor's Office stands by its conclusion that the Board was not able to provide documentation to support that its legal team reviewed the contract prior to execution.

The Board stated that the contractor requirements delineated in the contract encompass Title 22, Texas Administrative Code, Chapter 217. After a review of the contract, the State Auditor's Office stands by its conclusion that the Board did not ensure that Title 22, Texas Administrative Code, Chapter 217, which details Program administration requirements, was included in the contract.

*I = Implemented

Appendix 2 – Referrals by Referral Source, Referral Type and Nurse Type

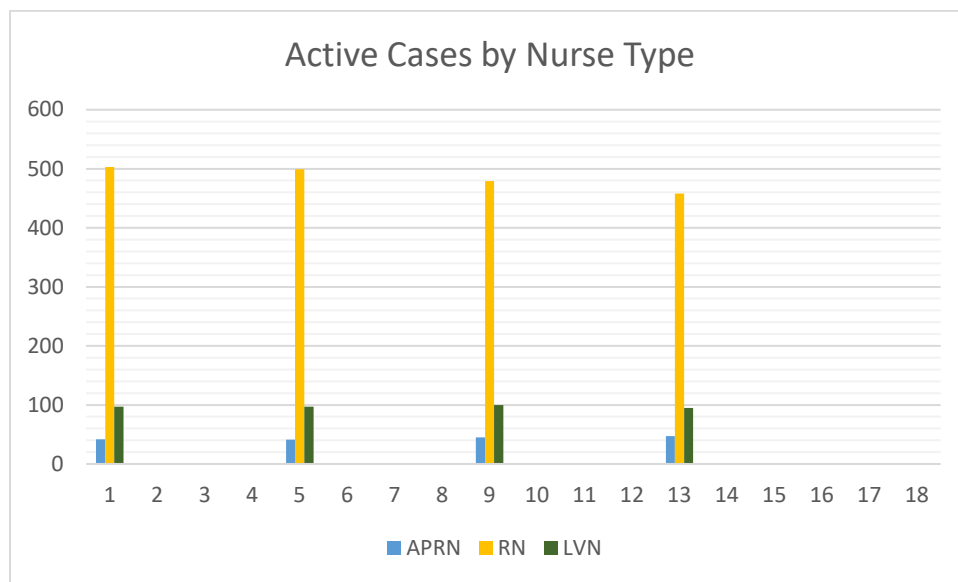
Referrals by Referral Source, Referral Type and Nurse Type					
Referral Type & Nurse Type	Referral Source: Board Order	Referral Source: Board Non-Order	Referral Source: Third Party	Referral Source: Self	TOTAL
Substance Use (SU)					
APRN	5	8	8	6	27
RN	81	170	54	49	354
LVN	23	60	16	11	110
TOTAL	109	238	78	66	491
Dual (SU & MH)					
APRN	1	2	2	2	7
RN	10	14	6	7	37
LVN	7	3	3	4	17
TOTAL	18	19	11	13	61
Mental Health (MH)					
APRN	0	1	2	2	5
RN	15	19	7	10	51
LVN	6	5	1	2	14
TOTAL	21	25	10	14	70
BOARD Extended Evaluation (EE) (A-0)					
APRN	0	1	0	0	1
RN	3	2	0	0	5
LVN	0	2	0	0	2
TOTAL	3	5	0	0	8
TOTALS	151	287	99	93	630
COMBINED					



Appendix 3 – Active Cases per Quarter and the Average for the Fiscal Year Ended August 31, 2020

Active Cases throughout the quarter by Nurse Type-1ST QTR				
	APRN	RN	LVN	TOTAL
TOTAL	42	503	97	642*
Active Cases throughout the quarter by Nurse Type-2ND QTR				
	APRN	RN	LVN	TOTAL
TOTAL	41	499	97	637*
Active Cases throughout the quarter by Nurse Type-3RD QTR				
	APRN	RN	LVN	TOTAL
TOTAL	45	479	100	624*
Active Cases throughout the quarter by Nurse Type-4TH QTR				
	APRN	RN	LVN	TOTAL
TOTAL	47	458	95	600*

*Average Cases =626



Appendix 4

Objective and Scope

Objective

The primary objectives of the internal audit were to determine the following:

- *Reliability and Integrity of Information*
- *Compliance with Policies, Procedures, Laws, and Regulations*
- *Safeguarding of Assets*
- *Economical and Efficient Use of Resources*
- *Accomplishment of Established Objectives and Goals for Operations.*

Scope

The scope of the audit work included ensuring compliance with the Board's policies and procedures and the Texas Administrative Code, Title 22, requirements, and any applicable federal requirements considered significant to the objectives of our internal audit. The scope included interviews with the Board and TNF staff, review and testing of supporting documentation; and other pertinent Board and TNF documents were tested for accuracy and compliance.

Methodology

The internal auditors obtained information from the Board and TNF and other pertinent personnel regarding internal controls in place, the processes for generating data submitted to the Board, and monitoring practices relating to the Texas Peer Assistance Program. Information was reviewed, analyzed, and verified to ensure the processes were functioning as intended.

Data Reliability, Completeness and Sampling Methodology

The internal auditors determined population completeness and reasonableness by gaining an understanding of the controls in place within automated systems used in generating data; evaluated the controls and performed procedures necessary to assure reliability and integrity of data. Selected and tested a random sample of cases and data for compliance with policies, procedures, laws, and regulations. Those sample sizes were not necessarily representative of the population as the intent was not to project test results to the population.

Information collected and reviewed included the following:

- Chapter 301.410, Texas Occupations Code
- *Chapter 467, Health and Safety Code*
- Chapter 301.4105 Texas Occupation Code
- Chapter 301.4106, Texas Occupations Code
- Texas Administrative Code, Title 22, Chapter 217
- Texas Board of Nursing Annual Financial Report for Fiscal Year Ended August 31, 2019
- Texas Board of Nursing Website (<http://Board.texas.gov>)
- Agency's Appropriations for Fiscal Years 2020 and 2021
- Agency Strategic Plan for Fiscal Years 2019-2023
- State Auditor's Office Audit Reports www.sao.state.tx.us

- Texas Nurses Foundation's Audited Financial Statements for the Year Ended June 30, 2020
- Texas Nurses Foundation's Business Continuity Plan
- Quarterly reports submitted by the Texas Nurses Foundation to the Texas Board of Nursing
- Texas Nurses Foundation's Organizational Chart
- Texas Peer Assistance Staff Directory
- Types of Referrals obtained from the Texas Nurses Foundation
- Data Back-up Report obtained from the Texas Nurses Foundation
- Anti-virus Report obtained from the Texas Nurses Foundation
- IT Managed Services Agreement obtained from the Texas Nurses Foundation
- Service Agreement between the Texas Nurses Foundation and the Peer Assistance Program Case Management vendor

Procedures and tests conducted included the following:

- Obtained an understanding of the processes for the Texas Peer Assistance Program functions conducted by the Texas Board of Nursing and the Texas Nurses Foundation.
- Researched the State Auditor's Office report system for any Texas Board of Nursing audit reports issued within the last three years for any reports relating to the Texas Peer Assistance Program and noted any issues or findings.
- Reviewed the Texas Board of Nursing's Annual Financial Report sent to the State Auditor's Office for year ended August 31, 2019 for information and an understanding of the agency.
- Inquired regarding legislative changes or potential changes in agency administrative processes which have had or may have an impact on the enforcement processing of complaint cases.
- Obtained and reviewed the Texas Board of Nursing policies and procedures manual for the Texas Peer Assistance Program.
- Obtained list and organizational charts of Texas Board of Nursing and Texas Nursing Foundation for a list of personnel involved in the Texas Peer Assistance Program.
- Obtained a listing of all cases for the 2020 fiscal year to randomly select samples for compliance testing with Board policies, procedures, laws, and regulations, and any other requirements that are significant to the objectives of our internal audit.

Criteria Used included the following:

- Texas Peer Assistance Program's policies and procedures manual for processing nurse referral cases.
- Texas Occupation Code, Chapter 301, Nursing Practice Act
- Texas Administrative Code, Title 22, Chapter 217
- Texas Board of Nursing website information relating to the Texas Peer Assistance Program
- Review of other pertinent reports and documents

Other Information

Our audit was conducted in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Our internal audit also conforms with the Institute of Internal Auditor's (IIA) *International Standards for the Professional Practice of Internal Auditing*.

Appendix 5

Background Information

In 1909 the Nursing Practicing Act (NPA) was passed which gives authority to regulate the practice of nursing. In 1909 the Board of Nurse Examiners was established in Texas after the passing of SB111. In 2004 the Board of Nurse Examiners and the Board created by the Vocational Nursing Act (1951) merged, creating the Texas state agency regulating the largest number of health care providers. In 2007, the Board of Nurse Examiners was renamed to the Texas Board of Nursing (Board) after the passing of HB 2426. The Board regulates over 410,000 nurses and 209 schools of nursing. The Board's key functions are:

- Licensing & Accreditation
 - Licensing & Examination
 - Accreditation
- Enforcement
 - Protect Public

The Board's Mission

The mission of the Texas Board of Nursing (Board) is to protect and promote the welfare of the people of Texas by ensuring that each person holding a license as a nurse in the State of Texas is competent to practice safely. The Board fulfills its mission through the regulation of the practice of nursing and the approval of nursing education programs. This mission, derived from Chapters 301, 303 and 304 of the Occupations Code, supersedes the interest of any individual, the nursing profession, or any special interest group.

The Texas Board of Nursing board consists of 13 members from throughout the State of Texas appointed by the Governor for 6-year terms with the advice and consent of the senate as follows:

(1) six nurse members, including:

- (A) one advanced practice nurse;
- (B) two registered nurses who are not advanced practice nurses or members of a nurse faculty; and
- (C) three vocational nurses who are not members of a nurse faculty;

(2) three members who are nurse faculty members of schools of nursing:

- (A) one of whom is a nurse faculty member of a school of nursing offering a baccalaureate degree program in preparing registered nurses;
- (B) one of whom is a nurse faculty member of a school of nursing offering an associate degree program in preparing registered nurses; and
- (C) one of whom is a nurse faculty member of a school of nursing at an institution of higher education preparing vocational nurses; and

(3) four members who represent the public.

The Board's operating budget is prepared and approved by the Board on an annual basis, whereas the State legislative appropriation request is determined every two years. Both the budget and appropriations are reviewed and approved by the State Legislature.

Appendix 6

Report Distribution

As required by Gov't Code Section 2102.0091 copies of this report should be filed with the following:

Governor's Office of Budget and Planning

Attn: Sarah Hicks
Phone: (512)463-1778
Budgetandpolicyreports@governor.state.tx.us

Legislative Budget Board

Attn: Christopher Mattsson
Phone: (512)463-1200
Audit@lbb.state.tx.us

State Auditor's Office

Attn: Internal Audit Coordinator
Phone: (512) 936-9500
iaordinator@sao.state.tx.us

Sunset Advisory Commission

Attn: Jennifer Jones
Phone: (512) 463-1300
Sunset@sunset.state.tx.us

Texas Board of Nursing

Members of the Board of Nursing:

Kathy Shipp, MSN, RN, FNP – President
Allison Porter-Edwards, DrPH, MS, RN, CNE – BSN Education, Vice President
David Saucedo, II – Consumer Member
Laura Disque, MSN, CGRN – RN Practice
Carol Kay Hawkins – BSN, RN Practice
Mazie Mathews Jamison, BA, MA – Consumer Member
Kathy Leader-Horn, LVN – LVN Practice
Tamara Rhodes, MSN, RN - ADN Education
Melissa Schat, LVN -LVN Practice
Daryl Chambers, BA – Consumer Member
Rickey “Rick” Williams – Consumer Member
Kimberly “Kim” Wright, LVN – LVN Practice
Kenneth D. “Ken” Johnson, RN – LVN Education

Texas Board of Nursing Management

Katherine Thomas, MN, RN, FAAN, Executive Director