



SUNSET AUDIT REPORT

Board of Nursing

**A Report to the Legislative Post Audit Committee
By the Legislative Division of Post Audit
State of Kansas
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Through its audit work, the Division provides the Legislature with information for evaluating the work of State agencies. This information helps the Legislature decide what should be done to bring high quality services to Kansans in the most effective and economical manner.

Legislative Post Audit performs its work in the following ways:

1. By law, the Division reviews the financial affairs and operations of each State agency at least once every three years, including appropriate agency controls, receipts, expenditures, and other records and systems. The Division also reviews other aspects of an agency's operations to determine whether State laws, policies, and programs are being carried out effectively, efficiently, and economically.
2. At the direction of the Legislative Post Audit Committee, the Division reviews and assesses particular State programs to determine how effectively and efficiently a program is meeting its goals and whether legislative intent is being fulfilled.
3. Under the Kansas sunset law, the Division evaluates those State agencies the Legislature must decide whether to abolish or retain. The Division's sunset audits are based on criteria set forth in the law, and the Legislature uses the findings to help in its decisions.
4. At the direction of the Legislative Post Audit Committee, the Division conducts audits of special topic areas. Under the Committee's rules, these special audits are reviews of particular problems and are to take no more than 40 hours of staff time.

The Legislative Post Audit Act directs the Division to conduct its audit work "according to accepted auditing standards." As its professional guidelines, the Division uses the publication, *Standards for Audit of Governmental Organizations, Programs, Activities, and Functions*, issued by the Comptroller General of the United States in consultation with state and local finance officials and such related professional organizations as the American Institute of Certified Public Accountants.

Legislative Post Audit presents its findings in four kinds of reports—financial and compliance audit reports, performance audit reports, sunset audit reports, and special audit reports. The reports often contain recommendations that range from relatively small adjustments in agency operations to full-scale revampings of major programs. These recommendations are referred to the Legislative Post Audit Committee for consideration. Through the independence given to the Division by the Committee and by the provisions of law, and through the independent and rigorous nature of its audit and review procedures, Legislative Post Audit strives to produce findings and recommendations that are impartial, objective, and useful to the Legislature and the people of Kansas.

LEGISLATIVE DIVISION OF POST AUDIT

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FOREWORD

This sunset performance audit addresses the question: Is there a need for continued State regulation of the State's nearly 29,000 nurses and more than 1,600 licensed mental health technicians? This report concludes that State regulation should be continued over nurses and mental health technicians.

The services performed by both nurses and mental health technicians could potentially result in harm if they are performed improperly. Nurses perform various health services including care, diagnosis, and treatment of patients in hospitals, nursing homes, and private settings. Nursing often can involve "life and death situations." Improper nursing care could result in physical harm to a patient, who is usually relatively uninformed about proper nursing care.

Mental health technicians' job duties involve considerable interaction with patients who generally include emotionally disturbed children, alcoholics, drug addicts, juvenile offenders, the elderly, mentally retarded children and adults, and developmentally disabled persons. These persons could suffer physically and mentally from circumstances they may not be able to control, such as inadequate health care, unsanitary conditions, and physical and mental abuse.

The auditors' review of complaints and disciplinary actions against licensed nurses disclosed the potential for physical harm to persons as a result of incompetence. The auditors found that the Board received no complaints against mental health technicians, but that disciplinary actions were taken by employers independently of the Board for various problems, such as medication errors. Without regulation, it is possible that such problems could increase. These factors led Legislative Post Audit to conclude that regulation is needed for the practices of nursing and mental health technology because of the potential harm to the public's health, safety, or welfare.

Another important concern in evaluating regulatory activity under the Kansas Sunset Law is whether regulation meets the needs of the public, not the needs of the groups being regulated. During their review, the auditors found several aspects of regulatory activity that do not appear to totally protect the public and that seem inconsistent or unnecessary. For example, the auditors' review of complaints found that Kansas received one complaint for every 1,197 nurses it licenses. In comparison, the four surrounding states received an average of one complaint for every 418 nurses they license, which is nearly three times greater than the Kansas

ratio. The auditors noted three problems that may be contributing to the low ratio of complaints to nurses in Kansas--inadequate reporting of violations by health care employers, restrictive Board policies regarding complaint procedures, and inadequate documentation of complaints by the Board. The report includes recommendations for improving complaint handling in these areas. The audit also includes recommendations to eliminate or revise certain restrictive and inconsistent licensing and disciplinary requirements, and to require continuing education for mental health technicians.

In recommending that the regulatory function over nurses and mental health technicians be re-established, the report presents options available to the Legislature. These options would include re-establishing the Board of Nursing to handle the regulation of both practices, consolidating the Board's regulatory functions with the regulatory functions of similar occupations, or creating a larger occupational licensing agency for all State-licensed occupations. If the regulatory function over nurses and mental health technicians is restructured, the recommended improvements to the Board's statutes, regulations, and procedures would also apply to the new regulatory structure.

The audit's recommendations, together with a brief description of the audit's findings, are presented in the summary that follows this foreword. The Board of Nursing reviewed a draft copy of the report and agreed to implement all recommendations.

The supervisor for this audit was Nicholas M. Kramer, and he was assisted by audit team member Dale L. Culver. Throughout the audit, officials of the Board of Nursing have been cooperative and courteous. Their assistance during the audit is appreciated.


RICHARD E. BROWN
Legislative Post Auditor

Summary of Matters for Legislative Attention

Audit Findings and Conclusions

The Kansas Sunset Law abolishes the Board of Nursing on July 1, 1983, unless it is continued by an act of the Legislature. The law states that the Legislative Post Audit Committee may direct the Legislative Division of Post Audit to conduct a performance audit of the agency or any of its programs or operations. The Sunset Law also authorizes the Committee to make a determination of each audit's scope and of the factors to be considered in each sunset audit.

The sunset audit addresses two main questions with regard to the regulation of nurses and licensed mental health technicians:

1. Does Kansas need to regulate nurses and mental health technicians?
2. Does State regulation adequately protect the public's health, safety, and welfare?

The Legislative Division of Post Audit reviewed the activities of the Board using the sunset and performance audit factors as the bases for drawing its conclusions. In brief, these criteria call for the Division to assess the need for State regulation and to determine whether the Board serves the general public or the people it regulates.

Legislative Post Audit concluded that regulation of the practices of nursing and mental health technology should be continued, but that regulation needs to be improved in some areas. The Division's conclusions were based on the following:

There is a potential for harm to the public if nurses and licensed mental health technicians are not regulated. The auditors' review of complaints and disciplinary actions against licensed nurses disclosed the potential for physical harm to persons as a result of incompetence. Without regulation, it is possible that these problems could increase. Although the Board received no complaints against mental health technicians, the auditors found that disciplinary actions were taken by employers independently of the Board. The services performed by both nurses and

mental health technicians could also potentially result in harm if they are performed improperly.

Some aspects of regulation do not totally protect the public and seem unnecessary or inconsistent. The auditors found that, generally, the Board's activities are effective in protecting the public. However, problems were found with the Board's statutes, regulations, and procedures in the following areas:

- The effectiveness of the Board's complaint investigation function is hampered by the following problems: inadequate reporting of complaints by health care employers, restrictive complaint filing policies, and poor documentation of complaint information.
- The "good moral character" licensing requirement is vague and has the potential for being used to arbitrarily restrict entry into the occupations.
- The two-thirds vote requirement for disciplinary actions against mental health technicians is unduly restrictive.
- The requirement that mental health technician's licenses be renewed annually is unnecessary and is not consistent with the biennial requirements of the other occupations regulated by the Board.
- It appears that the administration of medications by licensed mental health technicians may, technically, be a violation of the Nurse Practice Act.
- There is no mandatory continuing education requirement for mental health technicians to help ensure continued competence of these licensees.

In addition, the auditors found that the Board needs to direct more of its efforts toward regulating mental health technicians. The auditors found, for example, that informational programs on complaint handling and enforcement have been geared toward the Nurse Practice Act rather than the Mental Health Technician's Licensure Act. The Board also has not sought continuing education requirements for licensed mental health technicians, even though the other licensees that it regulates must fulfill such requirements.

The benefits of regulation outweigh the costs. The cost of State regulation of nursing and mental health technology, which is much less than one percent of total salaries, does not appear to significantly increase the costs of services to the public.

Alternative methods of regulation do exist. The auditors determined that eliminating the regulation of nurses and mental health technicians

could potentially result in harm to the public. Options may be available, however, for consolidating the Board's regulatory functions with the regulatory functions of similar occupations, or for creating a larger occupational licensing agency that would handle the regulatory functions of licensing, examining, and consumer affairs of other State-licensed occupations in Kansas.

Recommendations and Agency Response

The draft report was sent to the Board of Nursing for its review. This procedure is followed in the preparation of all audit reports. It offers an opportunity for the agency to point out any errors of fact, to provide information pertaining to the audit's findings, and to indicate its agreement or disagreement with the recommendations. The full text of the Board's response will be found in Appendix C.

Re-Establishing Regulation Over Nurses and Mental Health Technicians

The Legislature should take action to re-establish the State's regulatory functions over nurses and mental health technicians.

Agency response. The Board, in agreement with the recommendation, stated further that the Board of Nursing should be re-established as the regulatory agency over nursing and mental health technology.

Considering Options for Re-Establishing Regulation Over Nursing and Mental Health Technology

In re-establishing the regulatory functions over nursing and mental health technology, the Legislature should consider options of placing these functions under one of the following:

- a. The Board of Nursing.
- b. A newly created board that would perform regulatory functions and administrative duties for all health-related State-licensed occupations in Kansas.
- c. A newly created occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.

Agency response. The Board said it agreed with the first option, noting that it has "demonstrated responsible action on behalf of the public."

Improving Complaint Reporting and Investigation

To improve the reporting and investigation of complaints against nurses and mental health technicians, the licensing agency and Legislature should take the following actions:

- a. Assign all complaints a case number and maintain all the relevant facts and documentation on each complaint in a central case file.

Agency response. The Board said it now maintains a centralized file and agreed to assign a case number and include documentation for all complaints.

- b. Revise the complaint filing procedure to reduce the burden on complainants.

Agency response. The Board said that the complaint process will be re-evaluated to reduce the burden on complainants.

- c. Investigate all valid complaints.

Agency response. The Board agreed to investigate all valid complaints.

- d. Improve health care providers' knowledge of complaint reporting procedures and possible violations of law by licensees with increased communications such as workshops, newsletters, and other media.

Agency response. The Board said that workshops have been held and video tapes prepared to disseminate information on complaint filing procedures and possible violations of the law.

- e. Amend the Nurse Practice Act and Mental Health Technician's Licensure Act to require employers of nurses and

mental health technicians to report to the licensing agency any disciplinary actions taken against these licensees or resignations in lieu of disciplinary action for conduct which constitutes a violation of these acts.

Agency response. The Board agreed that a mandatory reporting law should be enacted.

Eliminating or Revising Restrictive and Inconsistent Requirements

In re-establishing the regulatory functions, the Legislature should consider making the following statutory changes:

- a. Eliminate the "good moral character" licensing requirement or revise it so that it is directly related to the practice of nursing and mental health technology.
- b. Eliminate the two-thirds vote requirement for disciplinary actions against mental health technicians.
- c. Revise the mental health technician annual license renewal period and fees to a biennial renewal period.
- d. Establish a mandatory continuing education requirement for the mental health technician license renewal.

Agency response. The Board agreed with all of these recommendations, which will require legislative action.

Reviewing Apparent Inconsistencies Concerning Administration of Medications

In re-establishing the regulatory functions regarding licensed mental health technicians, the licensing agency should review the apparent inconsistencies between the Nurse Practice Act and the Mental Health Technician's Licensure Act concerning the administration of medications. Consideration should be given to seeking legislation to amend the Nurse Practice Act. The amended Act would provide an exclusion to allow licensed mental health technicians to administer medications (similar to the exclusion for nursing home aides certified to administer medication through the Department of Health and Environment).

Agency response. The Board said it would review the Nurse Practice Act and the Mental Health Technician's Licensure Act with its legal counsel to determine inconsistencies and draft any corrective legislation.

Matters Remaining for Legislative Consideration

The decision to abolish, re-establish, or restructure the Board of Nursing rests with the Legislature. The Board agreed with all of the audit report's recommendations. However, a number of recommendations remain for consideration by the Legislative Post Audit Committee and the Legislature because they call for legislative rather than agency action. Those recommendations can be summarized as follows:

- Amending the Nurse Practice Act and the Mental Health Technician's Licensure Act to require employers to report disciplinary actions to the licensing agency.
- Eliminating the "good moral character" licensing requirement in both Acts.
- Eliminating the two-thirds vote requirement for disciplinary actions against mental health technicians.
- Revising the mental health technician annual license renewal period to a biennial renewal period.
- Establishing a mandatory continuing education requirement for mental health technicians.

Moreover, in considering the options for revising the Board's structure the Legislature has an opportunity to assess whether the current regulatory structure is meeting its goals or whether some form of consolidation might meet those goals more efficiently and with greater accountability.

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CHAPTER I

INTRODUCTION

The Kansas Sunset Law abolishes the Board of Nursing on July 1, 1983, unless it is continued by an act of the Legislature. The law states that the Legislative Post Audit Committee may direct the Legislative Division of Post Audit to conduct a performance audit of the agency or any of its programs or operations. The Sunset Law also authorizes the Committee to make a determination of each audit's scope and of the factors to be considered in each sunset audit. The sunset performance audit for the Board of Nursing is presented in this report.

Sunset Audit Methods

The factors to be considered in this audit include those set out in the Sunset Law and the performance audit factors specified in the Legislative Post Audit Act. These factors, restated as questions, can be found in the box on the next page. Based on these factors, Legislative Post Audit developed a set of tests and analyses for use in this audit. The tests and analyses used include the following:

- Determining the Legislature's intent in creating the program and the functions the agency should perform in accordance with that intent.
- Determining whether a need for the State program or activity exists.
- Determining and comparing the costs of regulation and the value of the regulatory activities.
- Comparing the regulatory activity in Kansas with that of other states.
- Reviewing the frequency of, and reasons for, complaints against those persons or businesses regulated by the agency.
- Determining if the agency effectively protects the public by ensuring that only qualified individuals or businesses are allowed to offer services in the State.
- Determining whether the general public has adequate input to the regulatory process.

SUNSET AUDITING

The questions Legislative Post Audit asked in this performance audit are based on a combination of the factors included in the Sunset Law and the Legislative Post Audit Act. More detailed information about the tests and analyses used in this audit can be found in Appendix A.

Is There a Need for State Regulation?

1. Would the absence of regulation by the State agency or office significantly harm or endanger the public health, safety, or welfare?

Does State Regulation Protect the Public?

2. Are all facets of the regulatory process designed solely for the public's protection, and is such protection the primary effect of that regulation?
3. Is there a reasonable relationship between the State agency's exercise of the police power and the protection of the public health, safety, or welfare?

Is Regulation Worth Its Cost?

4. Does the regulation by the State agency or office directly or indirectly increase the costs of goods or services involved and, if so, by how much?
5. Is any increase in cost to the public more harmful than the harm that could result from the absence of regulation by the State agency or office?

Are Alternative Methods of Protection Available?

6. Is there another less restrictive method of regulation available that could adequately protect the public?

Is The Regulatory Program Efficient and Effective?

7. Are the responsible agencies carrying out only those activities authorized by the Legislature?
8. Is the program being efficiently and effectively implemented in accordance with the Legislature's intent?
9. Is reorganization needed to accomplish the goals of the program?

Legislative Post Audit bases all conclusions and recommendations about eliminating regulatory agencies or programs or re-establishing and improving them on the sunset and performance audit factors. If, in applying these factors, Legislative Post Audit finds no evidence that the public would be significantly harmed without regulation, or finds that regulation protects the industry, is not worth its cost, or can be administered in a less restrictive fashion, the audit will reflect those findings. This practice is in keeping with the Legislature's intent--through the sunset process--of placing the burden of proof on the agency being audited to demonstrate a continued public need for regulation.

In conducting the sunset performance audits of the Board of Nursing, the auditors reviewed statutes and administrative regulations pertaining to the Board and to the regulation of nurses. They then compared Kansas' regulatory program and requirements with other states' programs and requirements. The auditors also examined records kept by the Board, including licensing and examination records complaint and hearing files, Board minutes, and accreditation and continuing education files.

Chapter II discusses the development of the regulation of nurses and mental health technicians and the current Board operations. Chapter III covers the sunset analysis of the Board of Nursing.

CHAPTER II

DEVELOPMENT OF THE REGULATION OF NURSES AND MENTAL HEALTH TECHNICIANS

From the initial State regulation of nurses in 1913 and mental health technicians in 1973, the primary purpose of regulating these occupations has been to protect the public from unqualified practitioners. Over the years, health care technology and the field of nursing have changed dramatically. To keep pace with these changes, the Legislature has gradually expanded the regulation of nursing practice and education. The Board of Nursing is currently responsible for administering this regulatory program, which includes such major functions as licensing applicants, accrediting educational programs, and enforcing the nursing and mental health technician acts.

Early Development of the Board and Nursing Practice

In 1913, the Legislature created the Board for the Examination of Trained Nurses to regulate professional nurses. The Board was authorized to administer qualifying examinations, issue registration certificates, and approve courses taught by schools of nursing. This first nursing legislation was essentially a "title act" which restricted the use of the title "professional nurse" or "registered nurse" (R.N.) to only those persons registered by the Board.

A new Nurse Practice Act was passed in 1949, which changed the Board's name to the Board of Nurse Registration and Nursing Education and significantly expanded the regulation of nursing by the State. This law broadened the scope of the regulation over professional nurses to require that all persons practicing professional nursing be licensed. The act also provided for the licensing of practical nurses. However, this licensing was required only for those practical nurses that used the title "licensed practical nurses (L.P.N.)." The Board's name was changed again in 1963 to the current Kansas State Board of Nursing.

Expansion of Nursing Practice and Mental Health Technology Regulation

In 1973, the Legislature passed the Mental Health Technician's Licensure Act. This law provided for the licensure of mental health technicians and approval of courses of mental health technology by the Board of Nursing. It would appear, from a review of legislative committee hearings concerning the law, that the impetus for its enactment came from

PRACTICE OF NURSING AND MENTAL HEALTH TECHNOLOGY

Kansas statutes define the roles for the three levels of nursing practice and for the practice of mental health technology. These four practice areas can be generally described as follows:

- Advanced nursing** is performed by advanced registered nurse practitioners who have received special training and certification as nurse practitioners, nurse anesthetists, nurse midwives, and clinical nurse specialists. (The statutes recognizing these four categories were declared unconstitutional by the Shawnee County District Court in June 1982.)
- Professional nursing** is performed by licensed registered nurses (R.N.s) who have been educated in the biological, physical, and behavioral sciences. Professional nurses may apply their skills in the administration, supervision, or teaching of the nursing process which involves care, diagnosis, treatment, counseling, and health education. They may execute the medical regimen prescribed by a person licensed to practice medicine and surgery, or dentistry.
- Practical nursing** is performed by licensed practical nurses (L.P.N.s) who have been trained to provide supportive and restorative care under the direction of a registered nurse, physician, or dentist. They typically provide such treatments as drainage, irrigation, catheterization, routine medication, and in taking and recording temperature, pulse, respiration, and blood pressure.
- Mental health technology** is performed by licensed mental health technicians who have been trained to provide services in caring for and the treatment of the mentally ill, emotionally disturbed, or mentally retarded under the direction of a physician or registered nurse. These services include recognizing and recording symptoms, carrying out prescribed treatments and medications, and other duties necessary for the rehabilitation and care of patients.

the mental health technicians and their primary employer, the Department of Social and Rehabilitation Services, rather than the general public. Licensure of mental health technicians was favored by these groups primarily to help upgrade the qualifications of psychiatric aides in the State's mental health and retardation hospitals. Shortly after the licensure of mental health technicians went into effect in 1974, the Special Committee on State Institutional Programs received extensive testimony of problems at the State hospitals involving psychiatric aides. These problems included physical abuse of patients, over-medication of patients, inadequate training, high turnover, and low salaries.

The 1975 Legislature made extensive amendments to the Nurse Practice Act based on an interim committee study. The most important changes included mandatory licensure for practical nurses and expansion of the membership of the Board of Nursing to include five registered professional nurses, two licensed practical nurses, two licensed mental health technicians, and two members of the general public.

During the 1976 Legislature, legislation was enacted requiring professional and practical nurses to complete approved continuing education courses as a condition for license renewal. The regulations implementing this law allowed for a gradual progression into the mandatory continuing education system beginning in 1978.

In 1978, the Nurse Practice Act was again amended to modify the definition of the practice of nursing and provide for the certification by the Board of advanced registered nurse practitioners who function in an "expanded role." This "expanded role" was to be defined in rules and regulations adopted by the Board. The Board adopted regulations which provided for four categories of advanced registered nurse practitioners--nurse practitioners, nurse midwives, nurse anesthetists, and clinical nurse specialists. The regulations went into effect May 1, 1981. However, in a June 1982 decision by the Shawnee County District Court, they were declared invalid because the statutes authorizing them were ruled unconstitutional. The court found that the statutes that authorized registered nurse practitioners did not provide any general guidelines or limitations on the function of nurse practitioners. Therefore, they were ruled as an unconstitutional delegation of legislative authority. The Board plans to seek legislation during the 1983 Legislature to correct the statutes, thus again authorizing advanced registered nurse practitioners.

Recent Legislative Oversight of the Board

During the 1980 and 1981 Legislatures, several amendments to the Nurse Practice Act were passed that were intended to increase the Board's emphasis on nursing practice rather than on nursing education. The first amendment required the Governor to fill the appointment of the five professional nurse members with three professional nurses engaged in nursing service and two engaged in nursing education. The second amendment authorized the Board to employ a skilled investigator to review complaints filed against licensees and also to charge administrative hearing costs to those licensees found guilty of violations of the Act.

During the 1982 Legislature, a subcommittee of the House Ways and Means Committee concluded in its report on the Board's appropriations, "... the Board continues to devote an undue amount of time to activities relating to nursing education which appear to be repetitious and unnecessary, while neglecting activities relating to nursing practice which the Legislature and Board itself have identified as priorities." The Subcommittee recommended that the Board streamline its procedures for approving education programs to make more effective use of its time and resources. Also, it recommended that one of the two nursing education consultant positions be reclassified as a nursing practice specialist, whose responsibilities would be oriented toward the practice of nursing and the investigation of complaints brought before the Board against licensees.

The Subcommittee also expressed concerns over the regulation of mental health technicians by the Board of Nursing. The Subcommittee concluded that the current regulation orients the occupation more in the direction of nursing than is appropriate for persons whose jobs demand that they deal with persons who have behavioral disorders as well as medical problems. The Subcommittee recommended that the Legislative Educational Planning Committee review the role and licensure of mental health technicians as part of its interim assignment in 1982 and report its findings to the 1983 Legislature. This study was to examine the following topics:

- A reorientation of the occupation and mental health technician licensure examination more toward behavioral sciences than nursing.
- A clarification of the role of mental health technicians in the State hospital setting, especially the overlap of the profession with nursing duties.
- The possibility of moving the licensure of mental health technicians from the Board of Nursing to the Division of Mental Health and Retardation Services.

The interim study was not completed at the time this audit report was written. However, testimony before the Educational Planning Committee--including testimony from the Department of Social and Rehabilitation Services--has so far favored retaining licensure of mental health technicians in the Board of Nursing. Testimony has also called for focusing training of the technicians more in the area of behavioral instead of medical disorders.

Board of Nursing Operations

The Nurse Practice Act provides for an 11-member board, composed of five registered nurses, two licensed practical nurses, two licensed mental health technicians, and two public members. Each member is appointed to a four-year term by the Governor. To supervise and carry out the daily operations of the agency, the Board appoints an Executive Administrator and employs 10 other full-time staff members. The staff is composed of a nurse practice specialist (recently reclassified according to the recommendation of the 1982 Ways and Means Subcommittee), a nurse education specialist, one secretary, six clerks, and one data entry operator.

The Board has three main functional responsibilities--licensure of applicants, enforcement of nursing and mental health technician laws and regulations, and accreditation and approval of education programs.

Licensing of Applicants

The Board is responsible for issuing licenses to professional nurses, practical nurses, and mental health technicians and for issuing certificates to the four types of advanced registered nurse practitioners. In general,

applicants for each of the three types of licensure must meet four requirements: be of good moral character, have a high school diploma, have successfully completed the accredited or approved educational program appropriate to the level of licensure, and pass the relevant examination. A "grandfather clause" in the licensing statute for mental health technicians allowed persons who had one year of experience as a mental health technician prior to the effective date of the Mental Health Technician's Licensure Act to obtain a license without meeting the educational or examination requirement. About 70 percent of the current licensees obtained their licenses under this clause.

In fiscal year 1982, the Board administered a total of 1,947 examinations for nurses and mental health technicians. The Board administers the National Council of State Boards of Nursing license examinations to professional and practical nurses. Both exams, which are used nationwide, are prepared and scored nationally. The final determination to pass or fail an individual rests with the Board; however, the Board follows the national passing score. Generally, the passing rates for Kansas applicants taking these exams have been comparable to the national average. The percentages of examinations passed, compared with national averages for examinations taken in fiscal year 1982 are as follows:

	Percentage Passed Statewide		Percentage Passed Nationally	
	<u>First Exam</u>	<u>Second Exam</u>	<u>First Exam</u>	<u>Second Exam</u>
Registered Nurses	83.0%	82.1%	84.4%	84.5%
Licensed Practical Nurses	93.2%	91.5%	92.4%	92.8%
Licensed Mental Health Technicians	79.8%	86.7%	n/a	n/a

The mental health technician examination is developed, administered, and graded by the Board of Nursing and is also given twice a year. Nurses who previously have been licensed in other states may be licensed by endorsement without an examination, provided all other Kansas requirements have been fulfilled. Mental health technicians previously licensed in other states must pass the Board of Nursing's examination to obtain a Kansas license.

All nurses must renew their licenses every two years. To do so, those who are engaged in active practice must submit evidence that they have completed a program of continuing education. For those who are not in active practice, the continuing education requirement is waived. The current continuing education requirement is 30 hours for each biennial

period. By contrast, mental health technicians must renew their licenses annually and there is no continuing education requirement. The fees for licenses range from \$10 for a mental health technician's license to \$50 for a professional nurse's application for license by examination. More details on the Board's fee structure are presented in Appendix B. The total licensees under the Board as of June 30, 1982, by practice area, are as follows:

<u>Title</u>	<u>Number of Licensees</u>
Registered Nurse	21,386
Licensed Practical Nurse	7,343
Licensed Mental Health Technician	1,621
Advanced Registered Nurse Practitioner	99(a)
Total	<u>30,449</u>

(a) These persons are also licensed as registered nurses.

Enforcement of Nursing Laws and Regulations

Kansas statutes allow the Board of Nursing to deny, suspend, limit or revoke licenses issued to nurses and mental health technicians for proper cause. When the Board receives a complaint against a licensee alleging such actions as drug abuse, unprofessional conduct, or incompetence, it assigns Board or staff members to investigate the allegations. The investigation is conducted to determine whether allegations represent possible violations of laws or regulations. If the investigation determines that the charges are based upon reasonable grounds, the Board may hold a formal hearing on the complaint. The hearing allows the Board to hear evidence presented by the accused and by the complainant related to the charges. Upon hearing the case, the Board makes a determination as to guilt and appropriate disciplinary action to take. In fiscal year 1982, the Board handled 24 complaints and held 12 disciplinary hearings--all against nurses. No complaints were received concerning licensed mental health technicians.

Accreditation and Approval of Education Programs

The Board is responsible for the accreditation and approval of nursing schools, nursing continuing education providers, and mental health technology programs. Through its rules and regulations, the Board sets standards for these programs that must be met before the program is approved. These standards include the administration and organization of the school or program, the number and qualifications of the faculty, curriculum content, clinical resources, and student admission policies.

The accreditation process involves several steps. First, schools and programs applying for accreditation must submit to the Board a feasibility

study outlining the need for the program and how the program will meet the Board's standards. If the Board accepts the feasibility study, more detailed information on faculty, clinical facilities, and curriculum is requested and an on-site survey is conducted by the Board's nursing education specialist. Based on this review, the specialist prepares a survey report for the Board's review and decision on accreditation. Traditionally, programs that receive approval of their feasibility studies--which involve considerable planning and commitment on the part of program administrators--are eventually accredited. Often, though, accreditations come with several recommendations for program improvement and may include several changes that the Board requires the administrators to make, such as hiring additional faculty and changing the focus of courses. The number of approved programs in fiscal year 1982 are as follows:

<u>Type of Program or Provider</u>	<u>Number</u>
Registered Nurse Programs	
Associate Degree	15
Diploma School	4
Baccalaureate Degree	9
Subtotal	<u>28</u>
Licensed Practical Nurse Programs	15
Licensed Mental Health Technician Programs	9
Nursing Continuing Education Providers	78

Nursing education programs. There are four basic types of nursing education programs approved by the Board--one for licensed practical nurses and three for registered professional nurses (associate degree, diploma school, and baccalaureate degree).

--**Licensed practical nursing programs.** There are 15 accredited practical nursing programs in Kansas that prepare a person to become a licensed practical nurse. These programs are taught in area vocational schools and community colleges. The course of study usually takes one year to complete and includes courses in basic areas of nursing.

--**Associate degree programs.** There are 15 accredited associate degree nursing programs in Kansas that prepare a person to become a registered professional nurse. These programs are generally offered by community colleges and take two years to complete. Associate degree programs combine general education courses with classroom nursing instruction and clinical training, which usually takes place at a hospital.

--**Diploma school programs.** There are four accredited diploma school programs operated by hospitals which prepare a person to be registered professional nurse. Diploma programs take three years to

complete. The first year is usually a pre-nursing basic science requirement of courses taken at a two- or four-year college or university. (Some hospitals have a contract with a local college to provide the first year basic education requirement.) The second and third years are taught at the diploma school and include classroom and clinical nursing instruction. Upon completion of the program, graduates are awarded a diploma, not a college degree.

--**Baccalaureate degree programs.** There are nine accredited baccalaureate degree programs in Kansas offered by public and private colleges and universities which prepare a person to be a registered professional nurse. Baccalaureate nursing programs take between four and five years to complete and include, in addition to classroom and clinical instruction in nursing, all of the general education requirements necessary to graduate with a baccalaureate degree. Advanced registered nurse practitioners have usually completed a baccalaureate nursing degree program, plus one or more years in specialized practitioner education.

Mental health technology education programs. There are two basic types of mental health technology programs approved by the Board--one offered by colleges or vocational-technical schools and one offered by State hospitals.

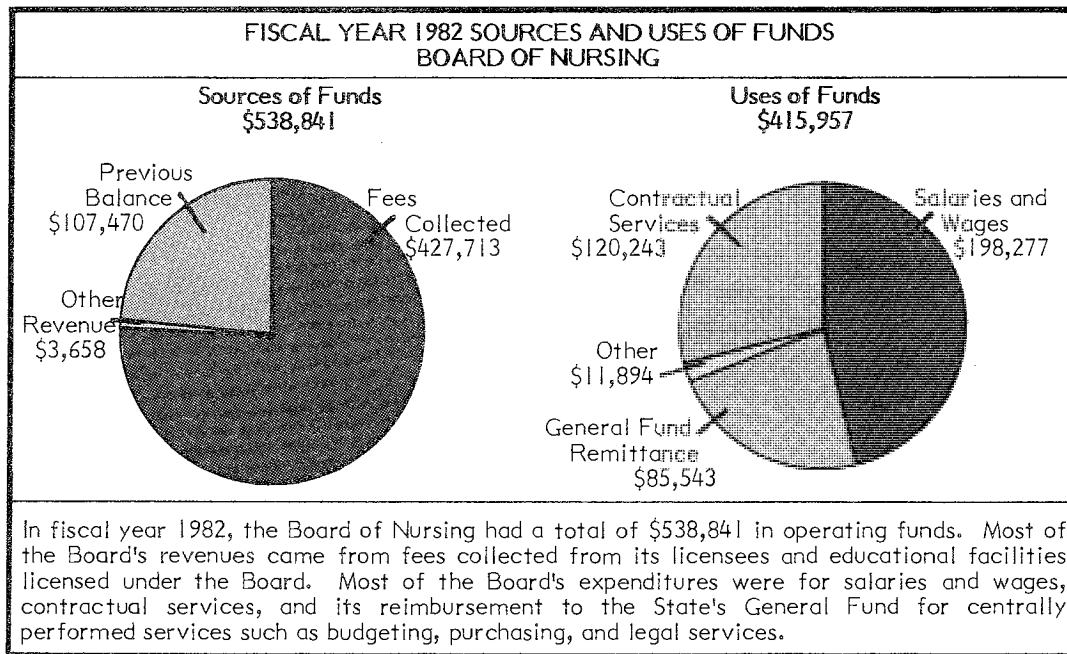
--**College and vocational-technical school programs.** There are two community colleges, one university, and one vocational-technical school which offer mental health technician training programs approved by the Board. The three college level programs offer a person the option of receiving an associate degree in mental health or completing two to three semesters of specified course work to be eligible to take the licensure exam. The vocational-technical school program is similar to the latter option in the college programs. Generally, the curriculum of these programs combines courses in human development, behavioral science, basic nursing concepts, and psychiatric therapeutic treatment with clinical instruction in mental health facilities.

--**State hospital programs.** There are five State mental health and mental retardation hospitals which offer mental health technician training programs approved by the Board. These programs are basically on-the-job training, which combine classroom instruction in such areas as human development, mental health care, and human relations, with clinical practice. These programs are completed in three phases as employees progress from the entry level human service worker job classification through psychiatric aide classification. Upon successful completion of the three phases of instruction, the student is eligible to take the licensure exam.

Nursing continuing education providers. There were a total of 78 on-going continuing education providers approved by the Board to offer continuing education courses and programs for nurses. These providers include hospitals that provide continuing education to their nursing employees and some of the accredited nursing education programs. To meet the 30-hour biennial continuing education requirement, a nurse must complete courses offered by these providers or obtain prior approval for courses or independent study not offered by an approved provider.

Agency Resources

The Board derives its operating funds from fees charged its licensees. In fiscal year 1982, the Board had a total of \$538,841 in operating funds available including a beginning balance of \$107,470, permit fees of \$427,713, and \$3,658 in other revenues. Of this total, the Board remitted \$85,543 (20 percent of permit fees) to the General Fund to reimburse the State for such centrally performed services as accounting, auditing, budgeting, and purchasing. Board expenditures totaled \$198,277 for salaries and wages, \$120,243 for contractual services, and \$11,894 for other expenses, leaving a fee fund balance of \$122,884 at the end of fiscal year 1982.



CHAPTER III

SUNSET ANALYSIS OF THE BOARD OF NURSING

The Kansas Sunset Law has five primary purposes--to bring about an evaluation of the need for certain agencies and programs, to determine whether the agency or program serves the general public or the group it regulates, to determine if there is a reasonable relationship between the exercise of the State's police power and the protection of the public, to determine if the benefits of the agency or program are worth the cost, and to determine whether the profession could be regulated in a less restrictive manner while still protecting the public. Legislative Post Audit designed its review to address these purposes, and its findings are reported in this chapter.

Does Kansas Need to Regulate Nurses and Mental Health Technicians?

To assess whether there is a need for State regulation of nurses and mental health technicians, Legislative Post Audit considered whether the absence of regulation would significantly harm or endanger the public health, safety, or welfare.

Potential Harm in the Absence of Regulation: Nurses

To determine the potential harm that could result in the absence of regulation of nurses, the auditors reviewed the nature of services provided by nurses and the complaints and disciplinary actions taken by the Board involving nurses. Because all 50 states regulate nurses and nursing practice, the auditors could not compare related problems that occur in regulated states with non-regulated states.

Nature of nursing services. Nurses perform various health services including the care, diagnosis, and treatment of patients in hospitals, nursing homes, and private settings. They often work in areas such as emergency rooms, intensive care wards, and surgery that involve "life and death" situations. Typically, they provide such treatments as drainage, irrigation, catheterization, administering medications, and recording vital signs. In addition, they exercise a great deal of independent judgment, and in the case of registered nurses, work with minimal supervision. Because improper nursing care could result in physical harm to a patient and because the average patient is relatively uninformed about proper nursing care, the potential for harm to the public appears to be significant.

Complaints against nurses. To determine the type and magnitude of problems occurring in Kansas, and to determine whether such problems could cause harm serious enough to warrant State regulation, the auditors reviewed complaints filed with the Board and the disciplinary actions taken by the Board. This review helped the auditors determine the possible harm that exists even when regulation is present. In reviewing the complaints filed with the Board over the past two fiscal years, the auditors found the Board had received a total of 45 complaints. These complaints can be categorized as follows:

<u>Type of Complaint</u>	<u>Number</u>	<u>Percent</u>
Drug-Related (stolen drugs, drug abuse)	36	80.0%
Unprofessional Conduct (for example, writing prescriptions or other acts beyond proper scope of practice)	1	2.2
Incompetence (for example, improper care)	6	13.4
License Expiration (remaining in nursing practice after licensed has expired)	1	2.2
Imposture (non-licensed individual practicing nursing)	<u>1</u>	<u>2.2</u>
Total	<u>45</u>	<u>100.0%</u>

In nine of these 45 complaints, the Board found insufficient evidence to bring the complaint to a Board hearing. In addition, one other complaint has yet to receive a determination as to whether it will reach a hearing

DRUG-RELATED COMPLAINT: AN EXAMPLE

Auditors found that circumstances in complaints alleging violations of the Nurse Practice Act by nurses could represent a potential for physical harm to the public. In one example, a complaint was filed by a nurse employed by a hospital, notifying the Board of an apparent violation of the Nurse Practice Act. The nurse named in the complaint was suspected of stealing and using controlled drugs while on duty at the hospital. According to the complaint the nurse was observed "... by nursing personnel to have a tourniquet around her arm and a syringe in her hand. Her verbal and non-verbal behavior were described as becoming increasingly erratic. ..."

The complaint further stated that the nurse was observed opening and sorting through the narcotic drawer

several times when patient records did not indicate any need for such medication. An analysis of the pre-filled syringes on the cart at the end of the nurse's shift showed that some of the medication was removed from some of the syringes and replaced with saline solution. As a result, two potentially dangerous situations occurred. First, there was a drug-impaired nurse on duty. Second, narcotic medications were tampered with, so that ineffective medications could have been administered to patients, had the incident gone undiscovered.

The Board held a formal hearing against the nurse for possible violations of the Nurse Practice Act for unprofessional conduct. The Board found the nurse guilty and suspended the license to practice for six months.

before the Board. In the remaining 35 complaints, the Board concluded that potential violations of law had occurred, and brought the complaints to Board hearings. Of these, 33 involved drug-related incidents, one involved unprofessional conduct, and one involved license expiration.

The auditors reviewed each of the complaints in depth to determine if any would potentially result in harm to the public. In many of the complaints, a nurse was found to be impaired, due to drug abuse, while on duty. Many of the drugs used by the nurses named in the complaints were obtained from hospital supplies, often by replacing medications intended for patient use with saline solution. Clearly, in this kind of situation, harm to the public can occur.

Disciplinary actions against nurses. Another measure of the potential harm to the public is the seriousness of disciplinary actions taken by the Board. The Board has the authority to initiate proceedings on its own motion or on the complaint of any person against any licensed nurse. After notice and a hearing, the Board may revoke, suspend, or limit any license issued by the Board for fraud or deceit in procuring a license, certain felony convictions, incompetence, drug abuse or addiction, or unprofessional conduct.

The auditors' review of Board complaint files showed that for complaints received during fiscal years 1981 and 1982, the Board held 23 disciplinary hearings. (The remainder of the 35 complaints determined valid by the Board during the fiscal years were not heard before the end of fiscal year 1982). Twenty-two of these hearings involved drug-related incidents, the remaining hearing concerned unprofessional conduct. The disciplinary actions taken by the Board on these hearings are summarized below:

<u>Disciplinary Action</u>	<u>Number</u>	<u>Percent</u>
License Revocation (reinstatement may be requested after one year)	8	34.8%
License Suspension (period determined by Board)	4	17.4
License Limited (scope of practice limited for defined time period, e.g. cannot administer medications)	6	26.2
License Surrendered Voluntarily	1	4.3
Letter of Reprimand (a)	1	4.3
No Action	<u>3</u>	<u>13.0</u>
Total	<u>23</u>	<u>100.0%</u>

- (a) The letter of reprimand resulted from a hearing on a complaint concerning unprofessional conduct. The remaining disciplinary actions stemmed from drug-related charges.

Based on complaints against nurses and disciplinary actions taken by the Board against nurses, the auditors concluded that--even with regulation--substandard health care work is occurring that could harm the public. These findings led Legislative Post Audit to conclude that the absence of regulation of nurses could pose significant harm to the public's health, safety, or welfare.

**Potential Harm in the Absence of Regulation:
Mental Health Technicians**

To determine the potential harm that could result in the absence of regulation of mental health technicians, the auditors reviewed the nature of services provided by mental health technicians, the complaints filed with the Board and disciplinary actions taken by the Board, and the experiences of other states that do not regulate mental health technicians.

Nature of mental health technician services. The Mental Health Technician's Licensure Act defines the practice of mental health technology as "... the performance, under the direction of a physician licensed to practice medicine and surgery or registered professional nurse, of services in caring for and treatment of the mentally ill, emotionally disturbed, or mentally retarded for compensation or personal profit, ..." These services include nursing and therapeutic procedures such as recognizing and recording symptoms, carrying out prescribed treatments and medications, and other services necessary for the rehabilitation and care of patients.

Approximately 950 persons, or about three-fourths of the active licensed mental health technicians, work in classified positions in the State's mental health and retardation hospitals. The licensed mental health technician classification is at the top of a civil service career ladder that begins with the entry level position of health services worker and progresses through three phases of training. The health services worker position is a temporary trainee position that does not require any experience. Supervisory personnel and screening committees monitor the progress of individuals as they take the training, and if the trainees do not satisfactorily complete the first phase (psychiatric aide training) they are terminated from employment by the State. Upon successful completion of a psychiatric aide training course consisting of 13 weeks of combined classroom and clinical instruction, a health services worker is eligible to be promoted to the psychiatric aide job classification. Currently, there are about 525 persons employed by the State as psychiatric aides.

After additional screening by the hospital, some of the psychiatric aides may pursue the licensed mental health technician training by taking the other two phases of training, which last about three months each. However, depending on several factors, such as the current need for licensed mental health technicians, the prospective students must wait until the training programs are offered. Students work part-time during the training period.

Persons outside of the civil service system can also complete approved mental health technician training courses or programs at several community colleges, a State university, and a vocational-technical school. Once a psychiatric aide or a person outside the civil service system has completed an approved mental health technician training course at a State hospital or college and passed the license exam, they are then eligible for the licensed mental health technician job classification.

Licensed mental health technicians employed by the State hospitals work under the direction of a professional nurse and perform the following types of duties:

- Taking and recording vital signs.
- Giving and charting medications.
- Keeping records and making reports on treatment, activities, behavior, and condition of patients.
- Assisting with teaching appropriate social behavior.
- Accompanying and participating with patients in scheduled therapy.
- Keeping the ward clean and orderly and maintaining supplies, clothing, and sanitation.
- Performing personal services, such as feeding, clothing, and bathing patients.

Similar services are performed by licensed mental health technicians who are not State employees. Veteran's Administration hospitals, the Menninger Foundation in Topeka, psychiatric wards in large general hospitals, and nursing homes also employ mental health technicians. Except for nursing homes, these employers do not appear to recognize the occupation's license to the extent that the State hospitals do. In fact, most of these mental health technicians are employed in the capacity of "psychiatric aide," an occupation that does not require licensure in Kansas. Psychiatric aides perform essentially the same functions as mental health technicians, except for administering medications and for some supervisory duties. In nursing homes, however, aides are allowed to administer medications if they have first obtained a certificate through the Department of Health and Environment's medication aide certification program. Nursing homes have recently begun to recognize the licensure of mental health technicians. Since early 1980, licensed mental health technicians employed at adult care homes are no longer required to obtain medication aide certifications in order to administer medications.

Although mental health technicians employed by facilities other than State hospitals and nursing homes are not allowed to administer medications and may not perform certain supervisory functions, the remaining duties they perform are essentially the same as those listed above for technicians at the State hospitals. Further, most of these job duties involve considerable interaction with patients--patients who are typically vulnerable.

Mental health patients include emotionally disturbed children, alcoholics, drug addicts, juvenile offenders, the elderly, mentally retarded children and adults, and developmentally disabled persons. These patients could suffer physically and mentally from circumstances they may not be able to control, such as inadequate health care, unsanitary conditions, and physical and mental abuse.

Given the vulnerability of the patients served and the nature of the job duties performed by licensed mental health technicians, the auditors concluded that the potential for harm could be significant if those job duties were performed improperly.

Complaints and disciplinary actions. To determine the type and magnitude of problems in the mental health technician occupation, and to determine whether such problems could cause harm serious enough to warrant State regulation, the auditors attempted to review complaints against licensed mental health technicians filed with the Board and the disciplinary actions taken by the Board. However, since licensure of mental health technicians began in 1974, the Board has received no complaints against mental health technicians and has taken no disciplinary actions against any of these licensees.

To determine if problems exist, but are not being reported, the auditors conducted telephone interviews with the directors of nursing services at each of the State mental health and retardation hospitals. In general, the directors indicated that problems, including medication errors, sometimes occur. One hospital took disciplinary action against eight licensed mental health technicians for various incompetent actions last year. These problems were handled by the hospital, however, and were not reported to the Board. Nonetheless, the auditors' survey indicated that although complaints were not filed with the Board, disciplinary actions had been taken by an employer. Therefore, substandard health care work was occurring--even with regulation--that could harm the public.

Other states' regulation. Kansas is one of only four states that license mental health technicians, psychiatric aides, or some similar title. These other states are California, Colorado, and Arkansas. In some of the other 46 states that do not regulate these occupations, personnel such as mental health technicians or psychiatric aides perform job duties in state hospitals and other psychiatric settings that, generally, are similar to those of licensed mental health technicians and psychiatric aides in Kansas. However, the specific job duties and the titles of positions charged with performing certain duties varied considerably among the states. For example, some of the states allow their psychiatric aides or technicians to administer medications while others allow only nurses to perform this function.

The auditors found, though, that some states that allow psychiatric aides or technicians to administer medications have some kind of control mechanism, in lieu of licensing, such as a medication certification. For example, psychiatric aides in Missouri are allowed to administer medication upon completion of a medication certification course at a community college.

The auditors also found that many of the 46 states that do not license mental health technicians base mental health care on a model of staffing that relies heavily upon licensed practical nurses to carry out functions essentially the same as those carried out by the mental health technicians in Kansas' State hospitals. Because of the differences in responsibilities of mental health care positions among the various states, the auditors could not compare related problems that occur in regulated states with non-regulated states.

In Kansas, a licensed mental health technician's duties involve considerable interaction with vulnerable patients. Further, most of the technicians (those who are employed by the State hospitals and nursing homes) administer medications. Such job duties, if performed improperly, could potentially harm the patients. The auditors found that while the Board received no complaints against mental health technicians since the occupation was regulated in 1974, disciplinary actions were taken independently of the Board. Therefore, substandard health care work was occurring--even with regulation--that could harm the public. Given the nature of the job duties of mental health technicians in Kansas and the disciplinary actions taken against some technicians, the absence of regulation of mental health technicians could pose harm to the public's health, safety, or welfare.

Does State Regulation Protect the Public's Health, Safety, and Welfare?

The primary purpose of regulation is to protect the public. Studies have shown, however, that regulatory agencies may become sympathetic to--even dominated by--the industries they regulate. These agencies may create policies and take actions that benefit the industry rather than the public. To address this concern, Legislative Post Audit made an examination to determine whether all facets of the regulatory process are designed solely to protect the public, whether such protection is the primary effect of regulation, and whether there is a reasonable relationship between the State's exercise of its police power in this regulatory activity and the protection of the public.

The auditors reviewed the Board's rules and regulations, statutory requirements, and its complaint-handling, examination, accreditation, and licensing activities to determine whether the Board's functions served to protect the public or the profession being regulated. This review found

that, generally, the Board's activities are effective in protecting the public. However, the auditors did find three areas in which improvements were needed in the Board's statutes, regulations, and procedures. These areas are: improving complaint reporting and investigation, eliminating or revising restrictive and inconsistent licensing and disciplinary requirements, and requiring continuing education for mental health technicians.

Improving Complaint Reporting and Investigation

Kansas statutes allow the Board of Nursing to deny, suspend, limit, or revoke licenses issued to nurses and mental health technicians for proper cause. The Board may take disciplinary action against nurses and mental health technicians for the following general reasons:

- Guilty of fraud or deceit in procuring or attempting to procure a license.
- Habitually intemperate or addicted to habit-forming drugs.
- Incompetence or gross negligence.
- Guilty of a felony or any offense involving moral turpitude.
- Mentally incompetent.
- Guilty of unprofessional conduct (nurses only).

When the Board receives a complaint against a licensee alleging these types of acts, it assigns Board or staff members to investigate the allegations. If the investigation determines that the charges are based on reasonable grounds, it may hold a formal hearing on the complaint. The hearing allows the Board to hear evidence presented by the accused and the complainant related to the charges. Upon hearing the case, the Board makes a determination as to guilt and appropriate disciplinary action to take. In fiscal year 1982, the Board handled 24 complaints and held 12 disciplinary hearings--all against nurses. The Board received no complaints against licensed mental health technicians.

During their review of complaints, the auditors found that the Board of Nursing received a relatively low number of complaints in comparison to other states. The table on the next page compares the ratio of complaints received to the number of licensed nurses, for the surrounding states, during one year. (The beginning and ending months of the counting periods are not identical for each state reviewed, but all totals cover a recent 12-month period.

As the table shows, Kansas received one complaint for every 1,197 nurses it licenses. In comparison, the four surrounding states received an average of one complaint for each 418 nurses they license, which is nearly three times greater than the Kansas ratio. While the specific reasons for the low ratio in Kansas may be difficult to determine, it does raise questions as to why the Kansas Board of Nursing receives such a low number of complaints.

<u>State</u>	<u>Complaints</u>	<u>Nurses</u>	<u>Ratio of Complaints to Licensed Nurses</u>
KANSAS	24	28,729	1 : 1,197
Colorado	88	42,587	1 : 484
Missouri	69	55,335	1 : 802
Nebraska	90	23,468	1 : 261
Oklahoma	114	29,186	1 : 256
Surrounding States' Average	90	37,644	1 : 418

The auditors' review of the Board's complaint investigation and resolution procedures identified three problems that limit the effectiveness of this function, which may also contribute to the low ratio of complaints to nurses in Kansas. The problems noted were inadequate reporting of violations by health care employers, restrictive policies regarding complaint procedures, and inadequate documentation of complaints.

Inadequate reporting of violations by health care employers. Knowledge of illegal or incompetent acts by nurses and licensed mental health technicians usually are not visible to the Board of Nursing. As a result, the Board has to rely on outside sources, such as hospitals, to report such violations to the Board. Unless such contacts are made, possible violations may not be reported to the Board. Through surveys of general and mental health hospitals, the auditors found cases of potential violations of the Mental Health Technician's Licensure Act and the Nurse Practice Act that were not reported to the Board.

When six general hospital administrators were questioned about nurses, they indicated that problems with incompetent nurses were handled in-house with such actions as additional educational training or increased supervision as a condition of continued employment. The reason generally given for not reporting a potential violation was that the hospital did not feel that a violation had occurred. It appears that drug-related incidents are widely recognized as violations of the Nurse Practice Act. However, it is not so widely accepted among health care providers as to what constitutes incompetent actions in violation of the Act.

Likewise, in contacting nine federal, State, and private mental health and retardation hospitals, the auditors found that although problems occur infrequently--as attested to by all hospitals surveyed--one administrator indicated that disciplinary actions were taken against eight mental health technicians in the past year. In three of these cases, the mental health technician was demoted to the position of psychiatric aide. For the remaining five, the licensee was terminated from the hospital's employ. All eight cases involved alleged incompetence, including medication errors and recurring poor performance of job duties. However, none of these

cases was reported to the Board of Nursing. Instead, problems were handled in-house.

Practitioner and employer awareness of proper reporting procedures and what constitutes violations are essential in maintaining an effective enforcement mechanism. A survey of other state boards of nursing revealed that many state boards keep the nursing community informed on how their boards function in relation to possible violations of their nursing laws. Through workshops and seminars, the boards present information in areas such as what constitutes a violation and how to report a violation. Many also provide complaint information packets that include complaint reporting forms.

The Board of Nursing began actively conducting such informational efforts when the nursing education consultant position was reclassified as a nurse practice specialist position in July 1982. The auditors found, however, that the Board's informational efforts to date have generally been directed toward nurses rather than toward mental health technicians. To increase public awareness of State licensing laws and complaint procedures, the Board should provide workshops and disseminate written materials on complaint procedures on a more regular basis among practitioners and administrators in both the mental health and nursing communities.

It should be noted, however, that although health care providers may be aware of what constitutes violations of the law, there may be some reluctance to report violations occurring in their facilities. For this reason, some laws in other states require the reporting of disciplinary actions or violations against licensees. For example, the State of Colorado's Nurse Practice Act requires an employer of a nurse to report to its nursing board any disciplinary action taken against the nurse, or resignation in lieu of a disciplinary action, for conduct that constitutes a violation of the Practice Act.

In Kansas, Board regulations state that nurses may be required to notify the Board of violations that the nurse is aware of. Regulations do not require such action on the part of the nursing care employer. Also, the Board currently does not have such regulations concerning licensed health technicians. The Nurse Practice Act and the Mental Health Technician's Licensure Act could be amended to require employers, as well as licensees, to report violations, disciplinary actions, and resignations in lieu of disciplinary actions. Mandatory reporting of violations and disciplinary actions to an independent body, such as the Board of Nursing, would help prevent incompetent licensees from working for other health care employers in similar capacities.

To further ensure that disciplinary actions and violations of both Acts are reported, the amended State statutes could also include provisions that require the Department of Health and Environment--which regulates

nursing homes--to report such findings to the Board. The Department, by the nature of its nursing home inspection and complaint handling activities, can learn of violations and disciplinary actions concerning nurses and licensed mental health technicians that may not have been reported to the Board of Nursing.

In summary, to ensure that violations of the law are being reported to the Board of Nursing, the Board should increase its informational efforts in the health care community concerning complaint handling procedures. In addition, health care employers and the Department of Health and Environment should be required to report violations of the Nurse Practice Act and the Mental Health Technician's Licensure Act.

Restrictive policies regarding complaint procedures. Also possibly contributing to Kansas' low number of complaints were restrictive Board policies that could have discouraged individuals with legitimate concerns from filing complaints.

During part of the two-year period reviewed, the Board's policy was to investigate and pursue only sworn complaints that were accompanied by a sworn affidavit. While this procedure may have been one way of screening invalid complaints, it seems unduly restrictive in that it placed an unnecessary burden on complainants. This procedure could have been discouraging individuals with legitimate concerns from filing complaints. Further, as the accompanying example demonstrates, this policy may have allowed potentially serious violations by a licensee to occur without disciplinary action.

The Board's current policy on complaints provides that its nurse practice specialist will investigate all complaints, including those without a sworn affidavit. It should be noted, however, that this policy has varied according to the interpretations of the statutes by the attorneys assigned to the Board. The Board relies on its attorney (an assistant Attorney General assigned to the Board) for interpretations of

UNRESOLVED COMPLAINT: AN EXAMPLE

The Board received three letters, two from registered nurses and one from hospital security officials, in regard to a drug-related problem at a hospital. This case involved a nurse who was questioned about missing narcotics on her shift. When the nurse was later searched, several needles, alcohol pads and injectable narcotics were found. All three letters related the information on the incident and provided a list of the items found on the nurse. The nurse named in the complaint worked for a temporary nursing service agency, which allows her to circulate and work among area hospitals. As a result, the hospital involved only asked the nurse to leave and notified the agency of the incident.

The Board, upon receiving the complaint, requested a signed affidavit so that the Board could pursue the case. No affidavit was submitted, and the case remains unresolved. Since no action was taken, the nurse named in the complaint could continue to work for the agency or any health care provider.

the statutes. During the two-year period reviewed by the auditors, the Board underwent several changes of attorneys, resulting in differing interpretations of the statutes in the area of complaint procedures.

The public would be better served and protected if the Board investigated all valid complaints (except anonymous complaints) in a consistent manner.

Inadequate documentation of complaints. During their review, the auditors found that procedures for recording and maintaining complaints and relevant facts were in need of improvement. Only those complaint cases which included a sworn affidavit and resulted in hearings were assigned case numbers and filed in the proper numerical sequence. Therefore, the central complaint file did not contain all the complaints received. Also, information in the complaint files was not complete.

To review all complaints received, the auditors initially reviewed all complaints that were assigned a case number. However, the auditors determined that additional complaints were received during the time period but were not assigned a case number because the complaint did not warrant an investigation or hearing. Several of these complaint files had to be located by the auditors on a case-by-case basis. The auditors also discovered additional complaints by reviewing minutes of the Board of Nursing meetings. These complaint files also had to be located on a case-by-case basis.

Because not all complaints received were numbered and maintained in a central file, it was difficult to determine which complaints had been filed, what the current status on each complaint was, the final disposition of each complaint, timeliness of the processing of the complaint, and other relevant complaint information.

A central file on complaints should include all complaints received, regardless of their disposition. Maintaining such a comprehensive central file would provide the Board the necessary control over the complaints received to ensure that all complaints are processed on a timely basis. It would also provide cumulative information on several aspects of the complaints received such as the nurse named and basis for the complaint. Such information would allow the Board to establish and analyze possible patterns among complaints received. For example, several minor complaints against one individual, received over a period of time, may indicate a more serious problem and warrant the Board's attention.

In reviewing individual complaint files, the auditors also found that some files were incomplete. In some cases, documentation of relevant facts or events, such as investigation reports, were difficult to locate or did not exist. For example, four sworn complaints that went to a Board hearing did not have investigation reports contained in the case file. For an additional 11 complaint files, no date was recorded on the investigation report.

If individual complaint files are incomplete, it is difficult to maintain adequate control over the processing of each complaint. Maintaining complete complaint case files would allow the Board to better monitor the progress of each individual complaint and help to ensure proper compliance and timeliness with complaint procedures. In addition, improved documentation would aid in decision-making.

Because the Board of Nursing is charged with the responsibility of protecting the public against improper actions by nurses and mental health technicians, it should maintain a central file on all complaints to assist in the monitoring of possible violations. In addition, those files should be as complete as possible.

Eliminating Restrictive and Inconsistent Licensing and Disciplinary Requirements

The auditors' review of the licensing and disciplinary requirements for nurses and mental health technicians identified three requirements that do not serve to protect the public or are unnecessary--good moral character requirements, the two-thirds vote requirement for mental health technician disciplinary actions, and the requirement that mental health technicians' licenses be renewed annually. In addition, the auditors noted apparent inconsistencies between the Nurse Practice Act and the Mental Health Technician's Licensure Act concerning the administration of medications.

Good moral character requirements. One of the statutory licensing requirements for nurses and mental health technicians is that they be of "good moral character." This is a common statutory requirement for many occupational licenses in Kansas and other states. Standards for licensure should be specific and understandable. The requirement that applicants be of "good moral character" is vague and subject to differing interpretations. Although there is no evidence that the Board of Nursing has ever misused this requirement, it could potentially be applied arbitrarily or in a discriminatory manner.

There are several options to prevent abuse of the good moral character requirement. The Model Nursing Practice Act developed by the National Council of State Boards of Nursing eliminates the requirement entirely. Another option would be to amend the requirement to read "good professional character" to indicate that the requirement is directly related to the occupation. Finally, the requirement could be maintained, but the Board could be required to adopt rules and regulations that would contain a specific listing of the conduct prohibited under the "good moral character" clause. Regardless of the option taken, this licensing criterion--if it remains--needs to be more objective.

Two-thirds vote requirement for mental health technician disciplinary actions. The Mental Health Technician's Licensure Act requires that the

Board of Nursing have an affirmative vote of two-thirds of the membership of the Board to withhold, deny, revoke, or suspend the license of a mental health technician. With the current 11-member board, this would mean that at least eight votes would be required to take disciplinary action. Because the Board has never received a formal complaint against a mental health technician, it has never held a disciplinary hearing where this vote would be required.

Currently, a simple majority of Board members is required for Board disciplinary actions against nurses. This is the usual vote requirement for other occupational licensing boards as well. Therefore, it appears that the two-thirds requirement for mental health technicians is unduly restrictive. This requirement should be changed to be consistent with the Board's disciplinary policies on nurses.

Annual license renewal requirement for mental health technicians.

The Mental Health Technician's Licensure Act requires mental health technicians to renew their licenses annually. By contrast, the Nurse Practice Act requires nurses to renew their licenses every two years.

The annual renewal fee from a mental health technician's license is \$10. Doubling that fee and requiring payment on a biennial basis rather than annually could increase the cost-effectiveness of handling license renewals. Biennial renewal would also be consistent with requirements of other licensees regulated by the Board of Nursing. Amending the Mental Health Technician's Licensure Act to require biennial license renewal rather than annual renewal could reduce the Board's handling costs and provide consistency to its license renewal policies.

Administration of medications by mental health technicians. Under the Nurse Practice Act, the administration of medication is a fundamental aspect of the practice of nursing. The Act also makes it unlawful to practice nursing in Kansas without being licensed under this Act. The Nurse Practice Act does contain an exclusion for unlicensed persons who have been certified as having satisfactorily completed a training program in medication administration approved by the Secretary of Health and Environment. However, the Act contains no such exclusion for licensed mental health technicians who administer medications. Therefore, licensed mental health technicians who administer medications may be technically in violation of the Nurse Practice Act.

In recent years, questions have been raised about which health care services are within the definition of the practice of nursing and which health care personnel are allowed to offer these services. To resolve these questions, a number of Attorney General opinions have been requested. For example, as health care technology has changed, opinions have been issued regarding the allowable duties of emergency medical technicians and home health aides. One such opinion was Attorney General Opinion 78-29, which concluded that adult care home aides were not allowed to administer

medication under the Nurse Practice Act. It was in response to this opinion that the 1978 Legislature amended the Nurse Practice Act (K.S.A. 65-1124), allowing adult care home aides to administer medications after they complete a medication administration training program approved by the Secretary of Health and Environment.

Currently, licensed mental health technicians administer medications in State mental health hospitals and in adult care homes. It appears from a review of the Mental Health Technician's Licensure Act that it is the Legislature's intent that these persons be allowed to administer medications under the direction of a licensed physician or registered nurse. However, in reviewing the Nurse Practice Act and Attorney General Opinion 78-29, it appears that the administration of medications by licensed mental health technicians may, technically, be a violation of the Nurse Practice Act.

To resolve this apparent inconsistency between the two Acts, a specific exclusion could be added to the Nurse Practice Act--similar to the exclusion for adult care home aides--to allow licensed mental health technicians to administer medications under specific circumstances.

Requiring Continuing Education for Mental Health Technicians

Most professions licensed by the State have a continuing education requirement for license renewal. For example, nurses must obtain 30 hours of continuing education every two years to renew their licenses. The purpose of this requirement is to ensure that practitioners keep up with new developments in the field and continue to have a level of competence similar to that at initial licensure. The Board's latest annual report (1981), states that one of its philosophies is that "continuing education should be required as one mechanism to increase competency." Despite this support for continuing education, the Board has not requested that legislation be introduced making continuing education mandatory for mental health technicians.

A continuing education requirement, similar to that required of nurses, should also be implemented for mental health technicians. Such a mandatory continuing education requirement would appear to improve the protection of the public by helping to ensure that mental health technicians maintain their competence and keep up with new developments in mental health care.

Is Regulation Worth Its Cost?

To assess whether the benefits of regulation justify its costs, two analyses were made: a determination of the degree to which regulation increases the cost of goods and services, and a determination of whether the increased cost is more harmful than an absence of regulation. The

auditors' analyses identified two types of costs that could be most directly related to the activities of regulation--administrative and indirect.

Administrative Costs

Administrative costs are the examination, license, and accreditation fees paid by nurses, mental health technicians, and schools. These fees support the Board operations. During fiscal year 1982, fee receipts for the Board of Nursing totaled \$427,713--approximately \$20,000 coming from mental health technicians and the rest coming from nurses and education facilities licensed by the Board. The different fees collected are presented in Appendix B. To determine whether these charges had a significant impact on the cost of services to consumers, the auditors compared the total fee receipts of \$427,713 with the salaries of nurses and mental health technicians. Based on 1981 statistics reported in the Statewide Health Coordinating Council's and the Department of Health and Environment's 1982 Plan for the Health of Kansas, the total salaries for these occupations licensed in Kansas is approximately \$342 million. Consequently, fee receipts represent far less than one percent of this amount.

Indirect Costs

The primary indirect cost identified by the auditors is the continuing education requirement for nurses to renew their licenses. To obtain a general estimate of the cost of continuing education requirements to nurses, Legislative Post Audit examined the amount charged for continuing education by the approved providers. In 1980, a survey conducted by the Board of Nursing showed that providers charged an average of \$4 per continuing education hour; therefore, the average cost for the 30-hour biennial continuing education requirement can be estimated at \$120. The auditors compared this estimated cost with the average annual income for nurses as reported in the 1982 Plan for the Health of Kansans. According to the report, the average income was just over \$15,000. Therefore, on the average, continuing education costs less than one percent of the average nurse's salary.

Taken together, these factors led Legislative Post Audit to conclude that the cost of regulating nurses and mental health technicians does not appear to significantly increase the public's cost for services provided.

Alternative Methods of Regulation

Two of the questions raised during the sunset audit process are whether there are alternatives for regulation that are less restrictive but still effective in protecting the public from harm and whether reorganization is needed to make a program more effective.

Legislative Post Audit concluded that the potential for harm in the absence of regulation of nursing was significant and that there was a need for regulation. The auditors' review also indicated a need to regulate mental health technicians. However, unlike nursing, licensing for this occupation is not as universally recognized--only three other states license mental health technicians. Therefore, the auditors examined the possibility of eliminating regulation provided by the Board. They also examined the possibility of retaining regulation of mental health technicians in the current Board structure but improving the Board's effectiveness in certain areas of regulation.

Eliminating the Regulation of Mental Health Technicians

The regulation of licensed mental health technicians is directed primarily toward persons using that title who are employed in State mental health and retardation hospitals. If the regulation of mental health technicians were discontinued, it is unlikely that State hospitals would significantly reduce their current education programs for mental health technicians. The Department of Social and Rehabilitation Services--the agency in charge of the State hospitals--has consistently been supportive of these programs since before the licensure was initiated in 1973. Further, federal Medicare and Medicaid reimbursement standards and Joint Commission on Accreditation of Hospitals standards require the hospitals to provide in-service training for all personnel, including those with psychiatric aide and mental health technician job responsibilities.

Since the State hospitals provide extensive training, close supervision, and disciplinary review internally, the approval of education programs and administration of licensing exams would be the primary regulatory functions missing in the absence of regulation. To alleviate these problems, the education requirements for mental health technicians could remain in statute and be made a part of the civil service job requirements for the mental health technician job classifications. Also, a civil service exam for mental health technicians could be developed to replace the current license exam.

Potential harm posed by job duties. In addition to the State's mental health and retardation hospitals nursing homes, private psychiatric hospitals, and large general hospitals with psychiatric wards also employ mental health technicians. These employers do not appear to recognize licensure of mental health technicians to the extent that the State hospitals do. Except for nursing homes, these employers do not allow mental health technicians to administer medications--a job function that could pose significant harm if performed improperly. Nursing homes have begun to recognize the licensure by allowing the technicians to administer medications.

Nonetheless, mental health technicians--whether employed at State hospitals, nursing homes, or other facilities--perform many other job duties that could pose potential for harm if performed improperly. These job duties involve considerable interaction with patients--patients who are typically vulnerable. Therefore, the potential for harm is present regardless of whether the employer allows medication to be administered.

Need for independent control. If licensure were eliminated, the only control over these job responsibilities would come from employers. This would allow incompetent or unscrupulous technicians who resign in lieu of disciplinary action or are terminated from employment to obtain employment elsewhere in the same capacity. Licensing by an independent board such as the Board of Nursing, would provide protection from such occurrences.

Career incentives provided by licensure. It should also be noted that licensure may provide incentive for persons to pursue an occupation, which has experienced high turnover. Regulation of mental health technicians has increased the training provided to persons working in mental health jobs in State hospitals and has enhanced the civil service career ladder for those jobs. Historically, complaints have been directed at the State hospitals for untrained personnel causing harm to patients, high turnover in psychiatric aide positions, low pay for aides, and poor staff morale. The mental health technician education programs in the State hospitals, which allow persons to receive on-the-job training and progress up a career ladder culminating in the licensed mental health technician classification, give employees an incentive to upgrade their skills and choose mental health technology as a long-term career.

Based on the nature of the job responsibilities, the need for independent control over those responsibilities, career incentives that licensure provides, and the low cost of regulation, Legislative Post Audit concluded that regulation of mental health technicians should continue. However, if regulation of mental health technicians is to continue within the Board of Nursing, the Board needs to direct more of its efforts toward mental health technicians. The auditors found, for example, that informational programs on complaint handling and enforcement have been geared toward the Nurse Practice Act rather than the Mental Health Technician's Licensure Act. The Board also has not sought continuing education requirements for licensed mental health technicians, even though the other licensees that it regulates must fulfill such requirements. In reviewing laws, regulations, and policies that do not protect the public, particular attention should be paid to these areas.

Retaining the Board of Nursing's Regulation of Nurses and Mental Health Technicians

The auditors examined the possibility of retaining the Board and its major functions in the areas of licensing, accreditation, and enforcing laws

and regulations pertaining to the practice of nursing and mental health technology. If the regulation of nurses and mental health technicians were re-established in the Board of Nursing, Legislative Post Audit concluded that the laws, regulations, and policies that do not serve to protect the public and are unnecessary should be reviewed and revised. These areas include the following:

- Improving complaint reporting by amending statutes to require all employers of nurses and mental health technicians to report possible violations of law by these licensees and by increasing communications with employers to encourage them to report possible violations.
- Improving complaint investigation by changing Board policies and procedures to provide for more complete documentation of complaints and for investigation of all written complaints.
- Eliminating the "good moral character" licensure requirements or revising them to make them more directly related to the profession.
- Eliminating the two-thirds vote requirement for disciplinary action against mental health technicians.
- Revising the mental health technician's licensure renewal requirement from annual to biennial.
- Reviewing apparent inconsistencies between the Nurse Practice Act and the Mental Health Technician's Licensure Act concerning the administration of medications.
- Establishing a mandatory continuing education requirement for the renewal of a mental health technician's license.

Consolidating the Board's Regulatory Functions With Other Agencies

One of the questions raised during the sunset process is whether reorganizing agencies under review would better meet the Legislature's goals in establishing regulatory functions. In recent years, interest has grown in the consolidation of all types of regulatory agencies. Often, common threads run through regulatory agencies--such as licensing, inspecting, and examining activities, or the regulation of similar types of people or professions. Some of the reasons for increased interest in consolidation include concern over the proliferation of agencies, concern that regulation on an industry-by-industry basis alone may become too intertwined with the interests of the industry and neglect those of the public, and concern that more efficient or effective regulation and administration can be provided.

Legislative Post Audit did not explore all possibilities for consolidating the regulatory function of the Board of Nursing with other agencies. However, the Legislature may want to consider the issue of consolidation or reorganization at the same time it considers re-establishing the regulation of nurses and mental health technicians.

At least two other State boards regulate occupations that have similarities to nurses and mental health technicians. The Board of Healing Arts regulates medical doctors, osteopaths, chiropractors, podiatrists, physician assistants, and physical therapy assistants. The Board of Behavioral Sciences regulates psychologists and social workers. The question has been raised by at least one legislative committee of whether the regulation of mental health technicians should be transferred to the Board of Behavioral Sciences. Further demonstrating the intermingling of health-related fields is the controversy occurring over the scope of practice of Advanced Registered Nurse Practitioners. Some doctors believe that several of the services provided by these nurses are unlawfully within the scope of the practice of medicine.

Other options for consolidation include creating a separate board to handle the functions and administrative duties of regulating these and other health care professions, or creating a larger occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.

Conclusions

Based on the sunset and performance audit factors, Legislative Post Audit concluded that the regulation of nurses and mental health technicians should continue. Briefly, the reasons are as follows:

1. **Potential harm to the public in the absence of regulation.** Complaints and disciplinary actions against licensed nurses disclose the potential for physical harm to persons as a result of incompetence. Without regulation, it is possible that these problems could increase. Although the Board received no complaints against mental health technicians, the auditors found that disciplinary actions were taken by employers independently of the Board. The services performed by both nurses and mental health technicians could also potentially result in harm if they are performed improperly.
2. **Protection of the public.** Licensing of nurses and mental health technicians would protect the public. However,

six aspects of the regulatory activity do not appear to totally protect the public and seem unnecessary:

- The effectiveness of the Board's complaint investigation function is hampered by the following problems: inadequate reporting of complaints by health care employers, restrictive complaint filing policies, and poor documentation of complaint information.
 - The "good moral character" licensing requirement is vague and has the potential for being used to arbitrarily restrict entry into the professions.
 - The two-thirds vote requirement for disciplinary actions against mental health technicians is unduly restrictive and does not serve to protect the public.
 - The requirement that mental health technician's licenses be renewed annually is unnecessary and is not consistent with the biennial requirements of the other occupations regulated by the Board.
 - It appears that the administration of medications by licensed mental health technicians may, technically, be a violation of the Nurse Practice Act.
 - There is no mandatory continuing education requirement for mental health technicians to help ensure continued competence of these licensees.
3. **Costs.** The cost of State regulation of the two professions, which is much less than one percent of total salaries, does not appear to significantly increase the costs of services to the public.
4. **Alternative methods of regulation.** Eliminating the regulation of nurses and mental health technicians could potentially result in harm to the public. Options may be available, however, for consolidating the Board's regulatory functions with the regulatory functions of similar occupations, or for creating a larger occupational licensing agency that would handle the regulatory functions of licensing, examining, and consumer affairs of other State-licensed occupations in Kansas.

Recommendations

1. The Legislature should take action to re-establish the State's regulatory functions over nurses and mental health technicians.

2. In re-establishing the regulatory functions over nursing and mental health technology, the Legislature should consider options of placing these functions under one of the following:
 - a. The Board of Nursing.
 - b. A newly created board that would perform regulatory functions and administrative duties for all health-related State-licensed occupations in Kansas.
 - c. A newly created occupational licensing agency that would perform all regulatory functions and administrative duties for State-licensed occupations in Kansas.
3. To improve the reporting and investigation of complaints against nurses and mental health technicians, the licensing agency and Legislature should take the following actions:
 - a. Assign all complaints a case number and maintain all the relevant facts and documentation on each complaint in a central case file.
 - b. Revise the complaint filing procedure to reduce the burden on complainants.
 - c. Investigate all valid complaints.
 - d. Improve health care providers' knowledge of complaint reporting procedures and possible violations of law by licensees with increased communications such as workshops, newsletters, and other media.
 - e. Amend the Nurse Practice Act and Mental Health Technician's Licensure Act to require employers of nurses and mental health technicians to report to the licensing agency any disciplinary actions taken against these licensees or resignations in lieu of disciplinary action for conduct which constitutes a violation of these acts.
4. In re-establishing the regulatory functions, the Legislature should consider making the following statutory changes:
 - a. Eliminate the "good moral character" licensing requirement or revise it so that it is directly related

to the practice of nursing and mental health technology.

- b. Eliminate the two-thirds vote requirement for disciplinary actions against mental health technicians.
 - c. Revise the mental health technician annual license renewal period and fees to a biennial renewal period.
 - d. Establish a mandatory continuing education requirement for the mental health technician license renewal.
5. In re-establishing the regulatory functions regarding licensed mental health technicians, the licensing agency should review the apparent inconsistencies between the Nurse Practice Act and the Mental Health Technician's Licensure Act concerning the administration of medications. Consideration should be given to seeking legislation to amend the Nurse Practice Act. The amended Act would provide an exclusion to allow licensed mental health technicians to administer medications (similar to the exclusion for nursing home aides certified to administer medication through the Department of Health and Environment).

APPENDIX A

TESTS AND ANALYSES USED TO MAKE A DETERMINATION OF THE SUNSET PERFORMANCE FACTORS

Sunset Factor 1

Whether the absence of regulation by the State agency or office would significantly harm or endanger the public health, safety, or welfare.

Test and Analyses

- Determine the number of persons or entities directly regulated by the agency and any significant changes in this number over time.
- Determine the number of complaints filed over time against those individuals or entities which are regulated.
- Relate the number of complaints to the population of the State, users of the service, and number of licensees to determine the magnitude of any problems.
- Determine if the users of services lack the knowledge necessary to evaluate the qualifications of those offering services.
- Determine if a high degree of independent judgment is required of practitioners; and how much skill and experience is required in making these judgments.
- Determine the harm to the public that might occur if complaints filed with the agency were not resolved.
- Determine the "value" to the public of the agency's enforcement and licensing functions.
- Determine the harm to the public prior to State regulation or in states without regulation.

Sunset Factor 2

Whether all facets of the regulatory process are designed solely for the purpose of the protection of the public and have such protection as a primary effect.

Tests and Analyses

- Determine the composition of all advisory boards to ensure general public representation.
- Document what the agency has done to encourage public input into the regulatory process.
- Determine if controls are sufficient to prevent unauthorized individuals or entities from operating in the State.
- Review regulation procedures, tests, and qualifications to determine if they are relevant and valid criteria for evaluating applicants desiring to provide services covered by regulation.
- Determine the frequency of and reasons for complaints made by the public against those entities or individuals regulated by the agency. A high level of complaints might indicate that unqualified individuals are allowed to become certified to provide the regulated services.
- Review enforcement procedures utilized by the agency to determine if there is a follow-up and resolution of complaints.
- Determine the types of disciplinary action taken against those individuals and companies against whom complaints have been filed.
- Determine the extent to which the agency has recommended statutory changes to the Legislature that would benefit the public as opposed to the persons regulated.
- Determine if the agency has taken all actions necessary to protect the public.

Sunset Factor 3

Whether there is a reasonable relationship between the exercise of the police power of the State by the State agency or office and the protection of the public health, safety, or welfare.

Tests and Analyses

- Based on audit findings concerning harm that would result without regulation and alternative methods of regulation, determine whether the regulation is reasonable or unnecessarily restrictive.

- Determine the reason for refusals of applications for licensing; determine if the refusals are based on valid criteria.
- Review complaints made by those regulated which might indicate that the standards or criteria used in the regulatory process are invalid or unjustified.
- Determine if there are any artificial barriers to entry such as:
 - a) excessive fees
 - b) unreasonable age, education, or residency requirements
 - c) unnecessary apprenticeships

Sunset Factor 4

Whether the regulation by the State agency or office has the effect of directly or indirectly increasing the cost of any goods or services involved, and, if so, to what degree.

Tests and Analyses

- Determine the costs to those regulated (i.e., license fees, testing fees, taxes, etc.).
- Determine the indirect costs to those regulated (i.e., training requirements, meetings, tests, paperwork-records, etc.).
- Compare the total costs of regulation to the total dollar volume of business done or the total cost of doing business by those regulated to determine if the cost of regulation is significant enough to increase the price charged for goods or services.
- Determine the degree to which the regulation restricts the supply of practitioners, thereby increasing the costs of goods or services.
- Determine if a less restrictive method of regulation would decrease the costs of goods and services.
- Determine if the agency restricts competition by prohibiting or restricting advertising.

Sunset Factor 5

Whether the increase in cost is more harmful to the public than the harm that could result from the absence of regulation by the State agency or office.

Tests and Analyses

- Compare the "value" of complaints resolved by the agency and the "value" of other regulatory activities with any costs due to regulation to determine whether the protection provided by regulation is greater than or equal to the cost of regulation. Consideration should be given to non-quantitative factors such as:
 - a. the deterrent effect of regulation
 - b. the effect of regulation on the competency of practitioners

Sunset Factor 6

Whether there is another less restrictive method of regulation available that could adequately protect the public.

Tests and Analyses

- Compare the regulatory activity in Kansas with that of other states.
- Determine if there is another agency or body that is already providing regulatory services or can adequately provide the same regulatory services.
- Determine if the following laws or standards could adequately protect the public without the agency:
 - a. unfair and deceptive trade practice laws
 - b. civil remedies such as injunctions and cease and desist orders
 - c. criminal laws such as prohibitions against false pretense, deceptive advertising, and cheating
 - d. standards such as construction codes or product safety standards

Performance Audit Factor 1

Whether any State agency is carrying out only those activities or programs authorized by the Legislature.

Tests and Analyses

- Determine the intent of the Legislature in creating the agency and the functions to be performed by the agency in accordance with that intent.

--Review statutes, regulations, legislative committee minutes, legislative studies, Attorney General opinions, and court decisions relevant to the agencies.

--Analyze the information to determine:

- a. what circumstance or need led to the creation of the agency.
- b. what functions the agency was originally created to perform.
- c. how and why the agency's functions have changed over time due to statutory changes, legal opinions, etc.

--Compare current agency programs and activities to those authorized by the Legislature.

--Note any discrepancies between the activities performed by the agency and the activities authorized by the Legislature, and determine what changes need to be made to bring all programs and activities into compliance with Legislative intent.

Performance Audit Factor 2

Whether the programs and activities of a State agency, or a particular program of activity, are being efficiently and effectively operated.

Tests and Analyses

--Evaluate the agency's expenditures for regulation.

--Compare the agency's expenditures by activity over several years to determine if costs have increased for the various aspects of regulatory activity.

--Compare agency regulatory expenditures to those in other states with similar programs.

--Review application and complaint files to determine:

- a. if applications are being processed on a timely basis
- b. if complaints are processed and resolved within a reasonable time span

--Review agency operations for:

- a. duplication of efforts or activities
- b. wasteful practices (for example, underutilized equipment or personnel)

APPENDIX B
FEE STRUCTURE
BOARD OF NURSING

<u>Type of Fee</u>	<u>Amount</u>
Professional Nurses	
Application for license by endorsement to Kansas	\$ 50.00
Verification of Kansas license	5.00
Application for license by examination	50.00
Reapplication for license by examination--each area	10.00
Biennial renewal of license	20.00
Application for reinstatement of lapsed license	30.00
Duplicate license	5.00
Practical Nurses	
Application for license by endorsement to Kansas	30.00
Verification of Kansas license	5.00
Application for license by examination	30.00
Reapplication for license by examination	30.00
Biennial renewal of license	20.00
Application for reinstatement of lapsed license	30.00
Duplicate license	5.00
Mental Health Technicians	
Licensure by endorsement to Kansas	20.00
Verification of current Kansas license to other Kansas	5.00
Examination	20.00
Rewriting the examination	20.00
Annual renewal of license	10.00
Reinstatement of lapsed license	15.00
Duplicate of annual license	5.00
Nursing Educational Programs	
Application for accreditation--schools of nursing	700.00
Biennial renewal of accreditation--schools of nursing	300.00
Application for approval of continuing education providers	200.00
Biennial renewal of approval of continuing education providers	100.00

<u>Type of Fee</u>	<u>Amount</u>
Nursing Educational Programs (continued)	
Approval of single continuing education offerings	\$ 25.00
Consultation by request --maximum per day, on-site	300.00
Mental Health Technician Educational Programs	
Annual renewal for approval of programs (State supported agencies are exempt)	30.00
Survey of a new program (State supported agencies are exempt)	100.00

APPENDIX C
AGENCY RESPONSE



KANSAS STATE BOARD OF NURSING

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TOPEKA, KANSAS 66601

Telephone 913/296-4929

November 22, 1982

Richard Brown, Ph.D.
Legislative Post Auditor
Legislative Division of Post Audit
301 Mills Building
Topeka, Kansas 66612

Dear Dr. Brown:

Mrs. O. Patricia Diamond, R.N., President of the Board and I have completed a detailed review of the Sunset Audit draft report of the Board of Nursing dated November 8, 1982. We wish to make the following comments, corrections and/or points for clarification. A specific response is enclosed for each recommendation. The responses are divided into four sections; General Comments, Corrections, Progress Report, and finally Responses to the Recommendations.

I. General Comments:

For the most part, we found the data in the report to be accurate and many of the recommendations helpful. We do not agree, however, that the deregulation of the Mental Health Technicians would be beneficial for the public.

Legislative Post Audit response. *The audit does not conclude that deregulation of mental health technicians would benefit the public. Rather, it recommends that regulatory functions over mental health technicians be re-established.*

Licensed Mental Health Technicians:

The Board believes that the deregulation of the Mental Health Technicians would endanger the public health, safety and welfare. The population served by the Mental Health Technicians is a very vulnerable group. Every effort has been made to strengthen the preparation of the persons attending the mentally ill, and/or mentally retarded. It is true that Mental Health Technicians are not universally recognized, however, Kansas should be recognized as a leader in this regard.

We disagree with the auditor's conclusion stating that a possible control mechanism of psychiatric aides, based upon a medication certification program, in lieu of licensure, which is conducted in an adjoining state would be beneficial. Licensure gives the regulatory control over a group (Licensed Mental Technicians) who work with a dependent and very vulnerable population group. In our judgement the procedure suggested would not be adequate to insure regulatory control.

The Legislative Educational Planning Committee accepted the Ad Hoc Committee's report regarding the licensure of Mental Health Technicians in October, 1982. Dr. Robert Harder, Secretary of Social and Rehabilitation Service, concurred that the licensure of Mental Health Technicians should remain with the Board of Nursing. It was further recommended that the present method of training not be changed. If the curriculum needs modification, Social Rehabilitation Service will work with the Board of Nursing to meet that objective.

Disciplinary Action Matters:

1. Low Number of Complaints: We believe the comparatively low rate of complaints filed is due, in large part, to the non-mandatory reporting aspect of our law. Since the reporting of disciplinary actions taken against licensees by hospitals is not mandatory, reporting is not the rule. A mandatory reporting statute would be helpful. Currently, the Board is investigating a publicized report of possible unprofessional conduct of a Licensed Mental Health Technician, based on a patient complaint.
2. Binding Restrictive Procedures Regarding Complaints: A sworn complaint has been required by two of the assistant attorney generals assigned to the Board of Nursing. The Statute reads, 65-1120 (b) Proceedings. "Upon the filing of a sworn complaint etc..." Some of the Board attorneys have interpreted this literally. The idea behind the sworn complaint is that the accused has a right to confront his accuser in an open hearing. The Board has filed complaints on it's own based upon possible unprofessional conduct. Generally, we do not believe that the reporting procedures are restrictive. It is true however, that the Board has received conflicting advice from assigned attorneys.

Legislative Post Audit response. K.S.A. 65-1120(b) does not limit the Board's powers to investigating only those cases in which a sworn complaint is received. Rather, this section of the law makes investigation mandatory upon receipt of a sworn complaint. The statute does not address the Board's actions in a situation in which it has knowledge of unlawful activity, but no sworn complaint. K.S.A. 74-1106 (c)(4)--the statute that gives the Board general authority--allows it to deny, suspend, or revoke licenses for proper legal cause. All powers and duties incidental and necessary to make such legislation effective--including the investigation of complaints--are implied by general rules of statutory construction unless

specifically precluded or limited in the statute. Neither statute limits the Board's powers of investigating cases to only those with sworn complaints. Therefore, Legislative Post Audit still feels that requiring sworn complaints is unnecessary and discourages complaint reporting.

II. Corrections:

Agency Resources:

Please add after purchasing, on page 13, and attorney general services.

Legislative Post Audit response. *The auditors determined that the information presented in this section of the draft report was not inaccurate and that a correction was not necessary.*

Advanced Registered Nurse Practitioners:

Not all Advanced Registered Nurse Practitioners have completed a B.S. degree, as the clinician program at Wichita State University does not require a degree for entrance. The program for clinical specialists at Kansas University does require a B.S. degree for entrance. (page 12)

Legislative Post Audit response. *The auditors determined that the draft report accurately reflected the above-stated information and that a correction was not necessary.*

Continuing Education:

Only a few of the accredited nursing education programs are also continuing education providers, most are not. For example, none of the ADN programs or LPN programs have been approved for continuing education. (page 13)

Legislative Post Audit response. *The final report has been changed to reflect this clarification.*

Fees: Licensed Mental Health Technicians:

The current fee for license renewal for a Licensed Mental Health Technician is \$10.00, not \$5.00 as reported in the audit report. (Pages 10, 28, and 45.) These fees were changed May 5, 1980. The Act has not been reprinted to reflect these changes. The current fees are as follows:

Mental Health Technicians

Licensure by endorsement to Kansas.....	\$20.00
Verification of current Kansas license to other	
states.....	5.00
Examination.....	20.00

Rewriting the examination.....	20.00
Annual renewal of license.....	10.00
Reinstatement of lapsed license.....	15.00
Duplicate of annual license.....	5.00
*Licensure by waiver.....	----

Legislative Post Audit response. The Board's fee changes have been incorporated into the final report.

III. Progress Report:

Education:

As noted, one of the priorities established by the Board during FY 1981 and FY 1982 was an increased emphasis on nursing practice. In order to do this, procedures for educational responsibilities have been streamlined. Simplified procedures and forms are now being used which have improved this operation.

Eliminating Restrictive and Inconsistent Licensing and Disciplinary Requirements:

We agree with the auditors regarding eliminating the phrase "good moral character." The suggestion to substitute "good professional character," is a good one.

We agree that a two-thirds majority for Mental Health Technician disciplinary action is high and should be changed. The change will reflect the majority rule, which is the case in the nurse practice act.

A biennial renewal of Licensed Mental Health Technicians is planned.

Disciplinary Matters:

The Board is making every effort and improvement has been made in the area of consistency in the manner of investigation. In the past, members of the Board conducted the investigations. We now have a professional nurse on the Board staff who conducts all of the investigations.

A centralized file is now maintained. The suggestion of an assigned case number, regardless of outcome, is a good one which will be incorporated immediately.

During the 1982 legislative session, specific standards of unprofessional conduct were passed. (K.S.A. 60-3-110)

"(8)...Willfully or negligently failing to take appropriate action in safeguarding a patient or the public from incompetent practice..."
 "Appropriate action may include reporting to the Board." (p. 21)

*Licensure by waiver is no longer possible

III. Progress Report (Continued):

This regulation will help somewhat, but a mandatory reporting law would be even more helpful. Workshops have been conducted throughout the state regarding these new regulations. During the first five months of FY 1982, 13 complaints have been received. The Board believes that many of the problems identified regarding complaint handling have improved since one person is now assigned the responsibility.

Mental Health Technicians:

Because of the nature of the preparation of Mental Health Technicians, it is true that some must wait for the training programs until a sufficient number of students are acquired, or an increased demand for Licensed Mental Health Technicians occurs.

The examination for the Licensed Mental Health Technician is developed by the Board in cooperation with those faculty who prepare Mental Health Technicians. The grading is done at Washburn University. The Board determined the passing score. At this writing, there is not a national examination available for Mental Health Technicians. Kansas is currently exploring the possibility of joining Colorado and Arkansas in a tri-state examination administered by the national testing service, who prepare the national nursing examinations. A review of the Mental Health Technician examination is planned for the December Board meeting.

A civil service examination might demonstrate some knowledge, but it would not deal with the issue of regulatory control. For example, without a license it would not be possible to prevent an individual who violates the Act from practicing. If a license is revoked, the individual may not work as a Mental Health Technician. Total employer control of employees is not a good idea.

Legislative Post Audit response. *Legislative Post Audit agrees that revoking a license would prevent an individual from working as a mental health technician. However, the revocation power is limited, because the individual would be prevented from working in that capacity only at institutions that recognize the license, which currently includes few institutions other than State hospitals. Therefore, it would still be possible for an individual with a revoked license to work at an institution that does not recognize the license--such as a Veteran's Administration hospital or private mental health hospital.*

Adult Care Homes have not required a medication aide course for Licensed Mental Health Technicians who administer medications. This policy was adopted by the Department of Health and Environment and was not recommended by the Board.

Regarding Medication Issue: (An exception in the Nurse Practice Act) is planned for Mental Health Technicians. The requirement for continuing education will also be established.

Newsletter: Dissemination of Information

An informational type newsletter would be most helpful if mailed to licensees to disseminate information. This in itself would help reduce the number of inquiries and letters. For the last two years, additional monies have been requested for this purpose. These funds have been denied.

IV. Conclusions and Recommendations:

Retaining the Board of Nursing's regulation of nurses and Mental Health Technicians is recommended.

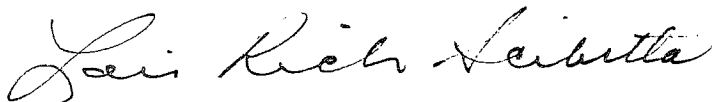
The Board agrees with all the conclusions on page 33 of the report, regarding enforcing laws and regulations. The Board will take action to implement the suggestions.

Recommendations:

- 1) Agree, Board of Nursing should be reestablished as regulatory agency for nurses and Mental Health Technicians.
- 2) Reestablish under Board of Nursing - who have demonstrated responsible action on behalf of the public.
- 3) The following actions are to be taken by the Board staff:
 - a. All cases will be assigned a number and will include documentation.
 - b. Complaint process will be reevaluated to reduce burden on complainant.
 - c. All valid complaints are to be investigated.
 - d. Workshops have been held and video tapes prepared regarding the Board of Nursing to disseminate message regarding Board's responsibility for licensure and related matters.
 - e. Legislation will be enacted to modify the Nurse Practice Act and Mental Health Technician Act to require employers to report disciplinary actions against licensees to State Board of Nursing.
- 4) Statutory changes: Board agrees that all suggestions would be helpful.
 - a. "Good moral character" - instead, "good professional character" will be substituted.
 - b. Two-thirds vote required for disciplinary actions against Mental Health Technicians will be changed.
 - c. Biennial licensure will be planned.
 - d. Mandatory continuing education will be planned for Mental Health Technicians.
- 5) The Nurse Practice Act and the Mental Health Technician Act will be reviewed by the Board and legal counsel to determine inconsistencies and to draft corrective legislation.

Thank you for this opportunity to respond to this draft audit report. The Board appreciated the care and consideration provided by the audit team in the conduct of the audit. Please feel free to contact me again if I can be of further assistance.

Sincerely yours,

A handwritten signature in cursive script that reads "Lois Rich Scibetta".

Lois Rich Scibetta, Ph.D., R.N.
Executive Administrator

LRS/amm

CC: O. Patricia Diamond, R.N.
President, Kansas State Board of Nursing

**LEGISLATIVE DIVISION OF POST AUDIT
PERFORMANCE AUDITS ISSUED**

COURTS

Analyzing the State Takeover of Salaries for District Court Personnel (February 1979)
Court Unification in Kansas (September 1979)

EDUCATION

The Planning and Construction of New Facilities at the Board of Regents' Institutions (March 1977)
Collecting Enrollment Fees at the Regents' Institutions (November 1977)
The Kansas Community Junior College System:
 Part I: State Financing and Supervision (June 1978)
 Part II: The Transfer of Courses to Regents' Universities (January 1980)
Off-Campus Education in Kansas (September 1980)
School Districts:
 LeRoy-Gridley, Greeley County, Elwood (October 1981)
 Russell County, Spring Hill, Columbus (December 1981)
 Topeka, Wichita (January 1982)
 Summary Report—School District Performance Audits (March 1982)
 Doniphan County Education Cooperative (March 1982)

FINANCIAL MANAGEMENT

Accounts Receivable Management: Establishing an Effective Credit Management System in Kansas (December 1976)
Financial Regulatory Agencies and Financial Regulatory Boards (December 1979)
Department of Revenue: Division of Taxation (September 1982)

HEALTH AND WELFARE

Selected Support Services at the University of Kansas Medical Center (January 1976)
Controlling Medical Assistance Costs in Kansas:
 Part I: Improved Accountability Through Better Program Information and More Effective Budget Review (August 1977)
 Part II: Options for Containing Costs (December 1977)
 Part III: Improving Controls Over Fraud and Abuse (September 1980)
Improving General Assistance in Kansas (January 1978)
Physicians' Corporations at the University of Kansas Medical Center (September 1978)
Food Service Regulatory Program (September 1979)
Adult Care Home Regulatory Program (November 1979)
Mental Health and Retardation Services:
 Part I: System-Wide Management (March 1981)
 Part II: Assessing Selected Aspects of Institutional Treatment (March 1982)

ENERGY, AGRICULTURE, AND NATURAL RESOURCES

Regulating the Appropriation and Use of Water (December 1975)
Management of Surplus State-Held Land (May 1976)
Kansas Energy Office (March 1982)
Grain Inspection Department: Regulation of Grain Elevators in Kansas (December 1982)

REGULATORY PROGRAMS, BOARDS, AND COMMISSIONS

Boards and Commissions: Athletic, Mobile Home and Recreational Vehicle, Abstracters, Psychologists, Social Workers, Hearing Aid Fitters (November 1978); Accountants, Barbers, Cosmetologists, Embalmers, Realtors, Technical Professions (Architects, Engineers, Landscape Architects), Civil Rights (September-December 1980); Board of Nursing (December 1982)
Kansas Corporation Commission: Office of the Securities Commissioner (August 1981); Motor Carrier Regulatory Program (October 1981); Mined-Land Regulatory Program (March 1982); Public Utility Regulatory Program (September 1982)
Department of Revenue: Dealer Licensing Regulatory Program (December 1982); Division of Alcoholic Beverage Control (December 1982)

TRANSPORTATION

The Planning and Construction of the State Freeway System (September 1976)
Assessing the Effectiveness of the Kansas Motor Carrier Inspection System (March 1978)
Maintaining Kansas Highways (January 1979)
Kansas Department of Transportation (September 1982)