

Board of Registered Nursing

Significant Delays and Inadequate Oversight of the Complaint Resolution Process Have Allowed Some Nurses Who May Pose a Risk to Patient Safety to Continue Practicing

Report 2016-046

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December 13, 2016

2016-046

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As required by Business and Professions Code section 2718, the California State Auditor presents this audit report concerning the Board of Registered Nursing's (BRN) enforcement program. BRN is responsible for implementing and enforcing the Nursing Practice Act, which establishes the laws related to the licensure, practice, and discipline of nurses. BRN regulates over 420,000 licensed nurses who provide health care services to the public and, on average, receives about 7,500 complaints annually regarding licensed nurses and prospective nurse applicants. This report concludes that BRN's inadequate oversight of its complaint resolution process resulted in significant delays, which allowed some nurses who may pose a risk to patient safety to continue practicing.

Our review found that BRN consistently failed to achieve the California Department of Consumer Affairs' (Consumer Affairs) 18-month goal for processing complaints. During our review of 40 investigated complaints resolved between January 1, 2013, and June 30, 2016, BRN failed to resolve 31 of the 40 complaints within the 18-month goal. In addition, 15 of those 31 complaints took longer than 36 months to resolve. Further, BRN took longer than 48 months to resolve seven of those 15 complaints, six of which included allegations of patient harm resulting from a nurse's actions. These delays primarily occurred because of BRN's ineffective oversight of the complaint resolution process and its failure to move the complaints through the various stages of the process in a timely manner.

Delays such as these have contributed to a backlog of complaints. Specifically, as of the end of July 2016, we identified a backlog of more than 180 complaints that BRN had not yet assigned to one of its investigators. In fact, nearly 140 were pending assignment for more than 10 days and, of these, roughly 70 involved urgent- or high-priority allegations, such as patient death, harm, or criminal activity, and had been waiting to be assigned for an average of nearly 80 days. Unnecessary delays in the complaint resolution process enable nurses who are the subject of serious allegations to continue practicing and may risk patient safety.

Further, BRN lacks accurate data to assess the timeliness of its complaint resolution process as the system it uses for enforcement activities lacks adequate controls to ensure BRN staff members accurately enter information into the system regarding complaint status. As a result, we found errors when attempting to calculate the length of each stage in the complaint resolution process, and had to remove nearly 4,800, or 17 percent, of the complaints from our analysis due to these errors. Additionally, BRN did not always adhere to Consumer Affairs' direction or state law requiring that it assign complaints categorized as urgent or high priority to Consumer Affairs' Division of Investigation (DOI), and instead chose to investigate the complaints internally. By not referring these complaints to DOI's sworn peace officers to investigate, BRN risks that appropriate attention and resources are not being directed at the most egregious complaints. As a result, it could be prolonging its complaint processing timelines and, more importantly, placing the public at a higher risk of potential harm. Finally, we found that BRN lacks a formal training program for its enforcement staff, and we believe this could be a contributing factor for the delays we identified in BRN's processing of complaints.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

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Summary

Results in Brief

The Board of Registered Nursing (BRN), a state regulatory entity that operates within the California Department of Consumer Affairs (Consumer Affairs), is responsible for resolving consumer complaints against registered nurses as part of its mission to protect the health and safety of consumers by promoting quality registered nursing care. Historically, BRN has reportedly struggled to resolve consumer complaints in a timely manner, often allowing significant delays to occur throughout the various stages of the resolution process. Our review found that BRN continues to experience significant delays in processing complaints. Although state law does not specify a time frame within which BRN must resolve complaints, Consumer Affairs has set a goal for BRN to process complaints within 18 months.¹ However, BRN has consistently failed to achieve this goal, in large part due to its ineffective oversight of the complaint resolution process and the lack of accurate data regarding complaint status. Such delays allow nurses to continue practicing who may have committed serious violations, and could potentially result in harm to patients.

During our review of 40 investigated complaints resolved between January 1, 2013, and June 30, 2016, we found that BRN struggled to promptly resolve complaints, which potentially placed patients at additional risk. Specifically, BRN failed to resolve 31 of the 40 complaints within the 18-month goal, and 15 of those 31 complaints took longer than 36 months to resolve—more than twice as long as Consumer Affairs’ goal. Further, BRN took longer than 48 months to resolve seven of those 15 complaints, six of which included allegations of patient harm resulting from a nurse’s actions.

A primary reason for the delays in processing these complaints was BRN’s failure to move the complaints through the various key stages of the complaint resolution process in a timely manner. For example, BRN took more than 45 days—the high end of its informal goal for this stage—to assign 24 of the 40 complaints we reviewed to an investigative unit, the stage that precedes assignment of the complaint to an investigator. Further, BRN took more than a year to assign nine of the 24 complaints to an investigative unit. For example, we found that BRN delayed assigning to Consumer Affairs’ Division of Investigation (DOI) a complaint alleging that a nurse caused a toddler’s death by administering the incorrect

¹ Consumer Affairs’ 2010 Consumer Protection Enforcement Initiative specifies that healing arts boards (health boards) should resolve complaints within 12 to 18 months. For purposes of this report, we assessed BRN’s timeliness of resolving complaints by comparing it to the high end of the goal, 18 months.

Audit Highlights . . .

Our audit concerning the Board of Registered Nursing’s (BRN) enforcement program revealed the following:

- » *BRN continues to experience significant delays in processing consumer complaints, allowing some nurses to continue practicing who may pose a risk to patient safety.*
- » *BRN consistently failed to achieve the California Department of Consumer Affairs’ (Consumer Affairs) 18-month goal for processing complaints.*
 - *Of the 40 complaints we reviewed that were resolved between January 1, 2013, and June 30, 2016, BRN failed to resolve 31 complaints within the 18-month goal—15 of those complaints took longer than 36 months.*
 - *Of those 15 complaints, BRN took longer than 48 months to resolve seven complaints, six of which included allegations of patient harm resulting from a nurse’s actions.*
- » *Delays in processing complaints primarily occurred because of BRN’s ineffective oversight and its failure to move complaints through key stages of the process in a timely manner.*
- » *Delays have contributed to a large backlog of complaints received but not assigned to a BRN investigator—more than 180 complaints had not been assigned as of July 2016.*
 - *Roughly 70 of these complaints involved urgent- or high-priority allegations, such as patient death or harm, and had been waiting to be assigned for an average of nearly 80 days.*

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- » *BRN lacks accurate data to assess the timeliness of its complaint resolution process.*
- *The system used for enforcement activities lacks adequate controls to ensure information is accurately entered regarding complaint status.*
- » *BRN failed to comply with Consumer Affairs' direction and state law that requires it to assign complaints categorized as urgent or high priority to Consumer Affairs' Division of Investigation. Instead, it chose to investigate those cases internally.*
- » *BRN's absence of a formal training program for its enforcement staff contributed to delays in processing complaints.*

dosage of medication. BRN initially assigned the complaint to its investigative unit, and BRN's chief of complaint intake and investigations (chief of investigations) acknowledged that it did nothing with the complaint for roughly 18 months. She indicated that the complaint should have been prioritized and referred to DOI faster due to its sensitivity. Ultimately, the nurse was allowed to practice for 39 months without BRN taking action against her license while it processed the complaint. BRN's nine-member board concluded that the nurse violated the Nursing Practice Act (Nursing Act) by inaccurately recording the dosage of medication administered to the toddler and placed the nurse on three years of probation.

Delays such as these have also contributed to a large backlog of complaints received but not yet assigned to one of BRN's investigators. Specifically, as of the end of July 2016, according to a report provided by BRN, at least 184 complaints had not yet been assigned by BRN to one of its investigators. Of those, 138 were pending assignment for more than 10 days. Roughly 70 of those complaints involved urgent or high-priority allegations, such as patient death, harm, or criminal activity, and had been waiting to be assigned for an average of 79 days. Unnecessary delays in the complaint resolution process enable nurses who are the subject of serious allegations to continue practicing and may risk patient safety.

BRN lacks accurate data to assess the timeliness of its complaint resolution process. BreEZe, the system that Consumer Affairs' health boards use for licensing and enforcement activities, lacks adequate controls to ensure that BRN's staff members accurately enter information into the system regarding the status of complaints, such as when a case is closed. As a result, we found several errors when attempting to calculate the length of each stage in the complaint resolution process. Ultimately, we had to remove nearly 4,800, or 17 percent, of the complaints from our analysis due to these errors. Using the remaining data, we found that complaints which included an investigation, averaged about 24 months, with the investigative stage taking the longest amount of time compared to other stages, which averaged between 15 and 19 months. However, these results may be inaccurate because of control weaknesses within BreEZe that do not require staff members to input activities in a manner that follows BRN's established business processes. According to BRN's chief of investigations, it is difficult to manage caseloads when the data are not reliable. Further, because of these errors, BRN is using inaccurate information to assess its workload and staffing needs.

Additionally, BRN has not adhered to Consumer Affairs' direction or state law requiring that it assign complaints categorized as urgent or high priority to DOI for investigation. Since 2009

Consumer Affairs has maintained complaint prioritization guidelines (complaint guidelines) for the health boards to refer to when determining the priority to assign to complaints. The complaint guidelines establish four categories for complaints, based on priority—urgent, high, and two levels that are considered routine. Consumer Affairs and DOI officials maintain that they have consistently verbally communicated to the health boards, including BRN, that complaints categorized as urgent and high priority must be referred to DOI for investigation. DOI's investigators are sworn peace officers and are required to complete specific training, whereas BRN investigators are not. However, during the course of our review, we found that BRN chose to have its non-sworn investigators investigate numerous high-priority and urgent complaints internally, rather than refer them to DOI. BRN attributes the continued use of its non-sworn investigators to investigate these complaints to the complaint guidelines' lack of a specific, written requirement that urgent- and high-priority complaints be referred to DOI. Because of a lack of adherence by some health boards to Consumer Affairs' verbal direction regarding the referral of complaints, state law effective January 2016 requires the health boards to use the complaint guidelines to prioritize their complaints and investigative workloads, and to refer complaints determined to be either urgent or high priority to DOI to investigate.

According to a DOI report, BRN should have forwarded roughly 170 cases during the period from December 2014 through June 2016 to DOI for investigation, but instead chose to investigate those cases internally. Further, when we reviewed 10 additional complaints that BRN received between January 1, 2016, and June 30, 2016—subsequent to when the requirement was established in state law—we found that it should have referred seven of the complaints to DOI to investigate, but did not. One of these complaints alleged that a nurse failed to follow proper procedures after an alarm sounded during a patient's dialysis procedure, which may have contributed to the patient's death. BRN's assistant executive officer stated that, although DOI directed BRN to refer complaints it categorizes as urgent and high priority to DOI, BRN had understood this to be a guideline and not a requirement. By not referring cases involving patient death and criminal allegations to DOI's sworn peace officers to investigate, BRN risks that the appropriate attention and resources are not being directed toward urgent and high-priority complaints. As a result, it could be prolonging its complaint processing timelines and, more importantly, placing the public at a higher risk of potential harm.

Although BRN identified the hourly cost of conducting investigations as another reason for its failure to comply with Consumer Affairs' direction and state law, state law specifies that the protection of the public shall be the highest priority for BRN and whenever the protection of the public is inconsistent with the promotion of other interests—such as cost savings—the protection of the public shall be paramount. The chief of investigations stated that BRN can reduce its enforcement costs considerably when its non-sworn investigators investigate the complaints because the cost per hour is lower. In fiscal year 2014–15, the most recent fiscal year in which actual cost information was available for both investigative units, DOI's hourly rate to conduct an investigation was \$235, more than twice BRN's hourly rate of \$88. Because BRN's lower hourly rate makes it less costly for BRN to conduct an investigation, the chief of investigations stated that having BRN's non-sworn investigators conduct investigations means that BRN can commit additional resources to training staff or increasing hourly pay in an effort to recruit additional expert witnesses, which she indicated BRN does not have the budget for otherwise. Nevertheless, cost is not a reasonable justification for choosing not to comply with requirements concerning BRN's most egregious complaints. BRN's mission is to protect and advocate for the health and safety of the public by ensuring the highest quality registered nurses in the State—not to minimize costs. Moreover, an advantage sworn peace officers have is that they have additional training, skills, and authority that BRN's non-sworn investigators lack.

Further, investigators did not always obtain the necessary evidence before forwarding complaints to the Office of the Attorney General (Attorney General) or appropriate expert witnesses, resulting in unnecessary delays and additional resources.² In our review of 40 investigated complaints, we identified five that the BRN investigated and three that DOI investigated in which supplemental investigations were requested because the investigator did not obtain sufficient evidence the first time. For example, we reviewed a complaint alleging that a nurse improperly administered a medication that resulted in patient harm, in which the deputy attorney general assigned to the case requested BRN to conduct a supplemental investigation to obtain the perspective of both the patient and the patient's spouse, who witnessed the incident. According to BRN's chief of investigations, the non-sworn investigator should have obtained this information during the initial investigation, but did not due to inexperience. It took the investigator an additional three months to obtain this requested evidence, which unnecessarily prolonged the amount of time BRN

² These instances included both DOI investigators, who are sworn peace officers, and BRN non-sworn investigators.

took to resolve this complaint. Additional training in evidence gathering might have helped avoid such a delay. A senior assistant attorney general for the Attorney General's licensing section indicated that both BRN non-sworn investigators and DOI sworn investigators would benefit from training in what constitutes sufficient evidence to substantiate that a nurse has violated the Nursing Act.

Finally, BRN lacks sufficient oversight of its enforcement activities. For instance, it lacks a formal training program for its enforcement staff. According to BRN managers, rather than providing formal training sessions, BRN conducts the majority of staff training through a shadowing process during which new staff members learn their jobs by reviewing complaints in collaboration with existing staff members. As a result, BRN risks that its staff is not appropriately processing and resolving complaints. We believe this is one reason for the delays we identified in BRN's processing of complaints. Further, BRN has not ensured that all nurses are fingerprinted, as the law requires. As a result, BRN is not always notified by the California Department of Justice (Justice) when a nurse is arrested or convicted. As of November 2016, BRN was working with Justice and Consumer Affairs to reconcile the number of nurses who BreEZe shows as having fingerprints compared with data provided by Justice. By not ensuring that all nurses comply with this requirement, BRN limits its ability to learn of criminal behavior and promptly take appropriate action against the nurse's license if the nurse poses a risk to patients.

Selected Recommendations

Legislature

If BRN does not develop and implement an action plan by March 1, 2017, to prioritize and resolve its deficiencies, as mentioned in the first recommendation to BRN, the Legislature should consider transferring BRN's enforcement responsibilities to Consumer Affairs.

BRN

To ensure that it promptly addresses this report's findings, BRN should work with Consumer Affairs to develop an action plan by March 1, 2017, to prioritize and resolve the deficiencies we identified.

To ensure that BRN resolves complaints regarding nurses in a timely manner, it should do the following by March 1, 2017:

- Develop and implement formal policies that specify required time frames for each key stage of the complaint resolution process, including time frames for how quickly complaints should be assigned to the proper investigative unit or expert witness, and how long the investigation process should take.
- Establish a formal, routine process for management to monitor each key stage of the complaint resolution process to determine whether the time frames are being met, the reasons for any delays, and any areas in the process that it can improve.
- Establish a plan to eliminate its backlog of complaints awaiting assignment to an investigator.

To ensure that it is able to accurately monitor the performance of its complaint resolution process and that it has accurate data to address its staffing needs, BRN should immediately begin working with Consumer Affairs to implement cost-effective input controls for BreEZe that will require BRN staff members to enter information into a complaint record in a way that is consistent with BRN's business processes.

BRN should immediately comply with state law and adhere to the complaint guidelines. Additionally, BRN should establish and maintain a process for communicating with DOI to discuss any questions that arise in assigning a priority to a complaint or referring a complaint to the proper investigative unit.

To ensure that BRN and DOI consistently conduct adequate investigations and obtain sufficient and appropriate evidence to discipline nurses accused of violating the Nursing Act if warranted, BRN in collaboration with Consumer Affairs should do the following:

- Implement a mechanism by March 2017 to track and monitor supplemental investigation requests that result from investigators' failure to obtain required documentation or sufficient evidence and use this information to mitigate the causes of these failures.
- Coordinate with the Attorney General to develop a biennial training program that includes techniques for gathering appropriate evidence and ensure that all investigators, including DOI's investigators, participate in this training.

- Use this training program to develop a procedural guide that specifies proper evidence-gathering techniques, including a description of what constitutes sufficient evidence, for investigators to follow when investigating complaints. They should then distribute this guide to all investigators, including DOI's investigators, by December 2017, and jointly instruct them to adhere to the guide when conducting investigations.

To ensure that its enforcement unit employees appropriately address and process complaints in a consistent and efficient manner, BRN should do the following:

- By March 2017, develop a process to centrally track the internal and external trainings its staff participate in. On a regular basis, managers should review this information to ensure enforcement staff are participating in a timely manner in appropriate trainings that address the enforcement activities they specifically perform and the types of complaints they may investigate.
- Implement a formal training program no later than December 2017. In developing this program, BRN should consult with DOI and the Attorney General to identify training that could benefit its enforcement staff, and also solicit input of its enforcement staff on areas of their job duties where they believe they need additional training.

BRN should continue working with Justice and Consumer Affairs and finalize its reconciliation, by March 1, 2017, of Justice's fingerprint data with its data in BreEZe to identify any nurses who are missing fingerprint records. Once this reconciliation is performed, BRN must take the steps necessary to immediately obtain fingerprints from those nurses for which Justice has no fingerprint records.

Agency Comments

BRN agrees with our recommendations and indicates that it plans to take various actions to implement them.

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Introduction

Background

The Board of Registered Nursing (BRN) is a state regulatory entity that operates within the California Department of Consumer Affairs (Consumer Affairs). State law establishes a nine-member board (BRN board) to serve as BRN's decision-making body. The BRN board is composed of five registered nurses and four members of the public. Seven of the members are appointed by the Governor and two of the public members are appointed by the Legislature. Each BRN board member serves a four-year term and can be reappointed, although a member cannot serve more than two consecutive terms. The BRN board meets monthly to discuss and decide on nurse discipline, nurse education, legislation, and various other administrative matters. BRN's mission is to protect and advocate for the health and safety of the public by promoting quality registered nursing care in the State.

BRN is responsible for implementing and enforcing the Nursing Practice Act (Nursing Act). The Nursing Act establishes the laws related to the licensure, practice, and discipline of nurses. According to state law, BRN's highest priority is the protection of the public while exercising its licensing, regulatory, and disciplinary functions. According to BRN's website, as of September 2016, BRN regulated more than 421,000 licensed nurses, who provided health care services in various settings, such as health departments, hospitals, private practices, and schools, among others.

BRN aims to protect the health and safety of consumers by enforcing the laws and regulations governing the practice of nursing. Part of this effort includes BRN's enforcement process, through which BRN determines whether nurses have violated provisions of the Nursing Act. According to statistics BRN provided, it receives an average of about 7,500 complaints per year regarding licensed nurses and prospective nurse applicants. BRN's enforcement unit handles these complaints. According to BRN's 2002 and 2010 *Sunset Review* reports, it has struggled to resolve consumer complaints within a reasonable time frame, often taking an average of three or more years to resolve. More recently, in its 2014 *Sunset Review Report*, BRN reported taking an average of 22 months to resolve consumer complaints. The enforcement unit—consisting of about 80 to 90 employees, according to the chief of licensing and administrative services—is responsible for processing incoming complaints, conducting investigations, implementing sanctions or discipline imposed by the BRN board, and monitoring nurses on probation. However, approximately 20 of these employees are responsible for processing incoming complaints, and fewer than 20 others are responsible for implementing board-imposed sanctions or discipline.

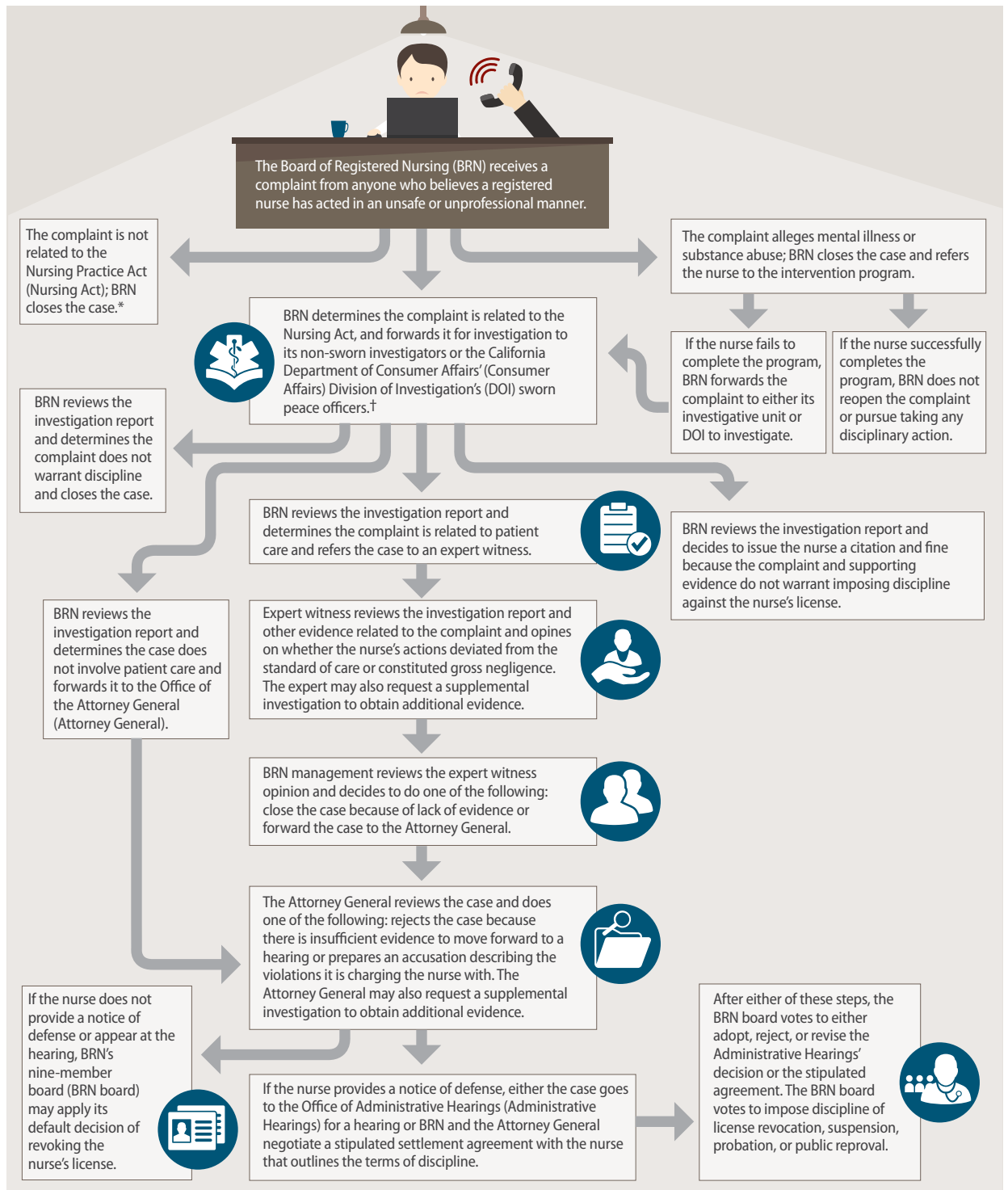
In October 2013, Consumer Affairs and BRN implemented an enforcement and licensing system known as BreEZe. The system enables consumers, licensees, and applicants to verify professional licenses, renew licenses, update personal license information, and file complaints, among other tasks. BRN uses BreEZe as a database to manage its cashiering, renewal, and licensing. It also relies on BreEZe for its enforcement functions, using it to manage its complaint resolution process from complaint intake through the BRN board's final disposition. However, as we discuss in the Audit Results, some of the data BRN entered into BreEZe lacks accuracy critical to assessing its efficiency and effectiveness in resolving complaints.

Complaint Intake and Investigation

According to state law, BRN must prosecute all people guilty of violating provisions of the Nursing Act. The BRN board may take disciplinary action against a licensed nurse or deny an application for a license for violations such as incompetence or gross negligence; procuring a certificate or license by fraud, misrepresentation, or mistake; or conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, among other reasons. BRN begins its enforcement process once it receives a complaint regarding a nurse. A complaint can be filed by anyone who believes that a nurse licensed by BRN has engaged in illegal activities that are related to the nurse's professional responsibilities. BRN receives complaints from members of the public, other governmental entities, and health care facilities, among others. As we discuss in our Audit Results, the California Department of Justice also notifies BRN following a nurse's arrest or conviction of a crime for those nurses whose fingerprints are on file.

After BRN receives a complaint, an intake analyst determines whether BRN has jurisdiction to investigate the complaint and, if so, moves the complaint forward. Figure 1 summarizes the steps BRN takes to resolve consumer complaints. It shows that if the allegation involves references to substance abuse or mental illness, BRN immediately refers the nurse to its contractor-managed intervention program to offer the opportunity for treatment. If substance abuse or mental illness is not alleged in the complaint, BRN determines whether the complaint should receive a formal investigation or should be closed because there is no evidence that the allegation is valid. If a formal investigation is necessary, BRN refers the complaint to either its investigators or Consumer Affairs' Division of Investigation (DOI) investigators. DOI's investigators are sworn peace officers, whereas BRN's investigators are not. Whenever an allegation involves criminal activity—such as an allegation of rape, murder, or child abuse—and criminal proceedings are under way against the nurse, a BRN staff member can appear in court to furnish

Figure 1
Summary of the Board of Registered Nursing's Complaint Resolution Process



Sources: Information provided by BRN and state law and regulations.

* According to BRN management, when BRN receives a complaint that is not related to the violation of the Nursing Act, it closes the complaint and forwards it to the appropriate healing arts board or agency.

† According to BRN's management, if BRN receives a notification from law enforcement that a nurse has been arrested or convicted of a crime, it could forward it to the Attorney General without conducting an investigation. Specifically, BRN's chief of complaint intake and investigations explained that if such a notice relates to an egregious crime such as murder, rape, or assault, BRN may refer the case to the Attorney General to obtain a suspension based on Penal Code section 23, by requesting at the nurse's arraignment or bail hearing that the judge suspend the nurse's license.

pertinent information and make recommendations regarding conditions of the nurse's probation. If there are no criminal charges filed, but the allegation is still a risk to public safety, such as if the nurse is practicing under a fraudulent license, BRN can also petition an administrative law judge to issue an interim suspension order—which would suspend the nurse's license to practice—or to impose restrictions on the nurse's license.

If the analyst determines that a formal investigation is needed, BRN's chief of complaint intake and investigations (chief of investigations) determines the appropriate investigative unit to handle the complaint. In a memorandum issued in 2009, Consumer Affairs established guidelines for prioritizing complaints (complaint guidelines) and indicated that it expected all healing arts boards (health boards), consisting of BRN and other health-related licensing agencies, to follow them. These complaint guidelines, which became part of the 2010 Consumer Protection Enforcement Initiative, aimed to direct the appropriate investigative resources and attention toward complaints. The 2009 complaint guidelines established three categories of complaints based on the severity of the allegation, prioritizing them as either urgent, high, or routine. Urgent complaints would require the most immediate resources to investigate, while routine complaints could be handled by the health boards in their ordinary course of business. According to Consumer Affairs, it verbally directed the health boards, including BRN, to refer urgent- and high-priority complaints to DOI for investigation. In July 2014, DOI revised the complaint guidelines to create four categories of priority and included additional criteria. Figure 2 depicts these revised guidelines. Because some health boards were not following Consumer Affairs' direction that all urgent- and high-priority complaints be referred to DOI investigators, the Legislature took steps to have the complaint guidelines established as a requirement in state law. As of January 2016, state law requires the health boards, including BRN, to use the complaint guidelines established by DOI to prioritize their respective complaint and investigative workloads and these guidelines require BRN and the other health boards to refer urgent- and high-priority complaints to DOI.

According to the director of Consumer Affairs, Consumer Affairs consistently communicated to the health boards, including BRN, between 2013 and 2016, that any complaints prioritized as urgent and high priority were required to be referred to DOI and investigated by sworn peace officers, whereas the health boards' investigators were to process the routine complaints. As we described previously, BRN's investigators are not peace officers. The director of Consumer Affairs also stated that, at his direction, DOI provided training to BRN and the other health boards on how to interpret and implement the complaint guidelines.

Figure 2
California Department of Consumer Affairs' Division of Investigation's Case Acceptance Guidelines for Complaints Filed With Healing Arts Boards



Sources: Consumer Affairs' DOI's Case Acceptance Guidelines as of July 2014 (Consumer Protection Enforcement Initiative Model) and interviews with DOI.

Note: In August 2016, Consumer Affairs published revised guidelines for the referral of cases for investigation. In particular, these guidelines specify that complaints categorized as urgent or high are to be referred to DOI for investigation, whereas complaints categorized as routine are to be investigated by the health boards.

Once an investigation begins, the investigator obtains evidence and generates a report on the findings. In cases involving patient care, BRN may contract with expert witnesses—registered nurses with specific types of experience and experts in areas such as oncology, hospice, psychiatry, and psychology—to provide an opinion based on the facts of the case. After BRN has obtained all relevant evidence, it determines whether it should pursue disciplinary action against a nurse’s license, issue a citation and fine, or close the case due to an inability to substantiate the complaint.

BRN’s Disciplinary Process

BRN has the authority to discipline a registered nurse for violating the Nursing Act. BRN may take disciplinary action for a variety of reasons, including incompetence or gross negligence, practicing medicine without a license, and using any dangerous drug or alcohol to the extent that it is dangerous to the nurse or others. As

shown in the text box, BRN may impose discipline ranging from public reproof to license revocation. A public reproof is a letter of reprimand that BRN issues to the nurse. It is not a restriction on the nurse’s license.

Types of Discipline

- Public reproof
- Probation
- License suspended
- License revoked

Source: Business and Professions Code sections 2759 and 495.

If BRN determines that a nurse’s violation or violations warrant formal disciplinary action, BRN forwards the case to the Office of the Attorney General (Attorney General) for review. The Attorney General prepares an accusation, which is a legal document that describes the charges it plans to pursue against a nurse, and

sends it to the nurse. The nurse may dispute the charges at an administrative hearing. An administrative law judge within the Office of Administrative Hearings, which is independent from the Attorney General, conducts the hearing. In some cases, BRN may negotiate a stipulated agreement with the nurse to resolve the case in lieu of a hearing. In such an agreement, the nurse admits to specific charges and agrees to the proposed disciplinary action. If the case goes to hearing, the administrative law judge writes a proposed decision. The proposed decision is then sent to BRN’s board for consideration. The board members make the final decision on disciplinary matters and can either adopt, modify, or reject proposed decisions and stipulated agreements. In addition, if a nurse fails to provide a notice of defense after receiving an accusation or fails to appear at an administrative hearing, state law authorizes BRN to consider the charges proven and take disciplinary action.

The disciplinary penalty is determined based on a number of factors, including how recent and severe the offense is, evidence of rehabilitation, any mitigating factors, and past disciplinary history. The version of BRN's *Recommended Guidelines for Disciplinary Orders and Conditions of Probation* that is currently in use was implemented in May 2003. This document outlines possible violations and the recommended disciplinary action for those violations. For example, for the violation of practicing medicine without a license, the minimum discipline is revocation stayed with three years of probation. This means the BRN board would place the nurse on probation for three years with specified terms, and if the nurse failed to meet any of the terms, the BRN board would revoke his or her license. If drug use, alcohol abuse, or mental illness was involved in a violation, probation terms could include participation in a treatment or rehabilitation program, participation in an ongoing counseling program, physical and mental health examinations, and drug screenings. State law authorizes BRN's board to deviate from these disciplinary guidelines in its decisions if it determines that the facts of a case warrant such a deviation due to, for example, mitigating factors, the age of the case, or evidentiary problems.

In addition to the discipline that the BRN board imposes, BRN's executive officer has the ability to impose sanctions in the form of citations and fines. California regulations allow BRN's executive officer to impose these sanctions in lieu of filing an accusation. BRN uses its "cite and fine" authority to resolve complaints against nurses when it determines it is appropriate. For example, BRN may recommend a citation and fine for a nurse who was arrested for driving under the influence of an intoxicant if the nurse's blood alcohol content was low and there were no aggravating factors. A citation issued in this way must describe the nature and facts of each violation, including a reference to the statute or regulation the nurse violated. The citation may contain an administrative fine or an order to take specific actions to address the violation, or both.

BRN's Cooperation With Other Agencies

According to BRN's chief of investigations, throughout the course of its enforcement process, BRN interacts and collaborates with multiple state and federal entities, including the U.S. Food and Drug Administration, California Department of Veterans Affairs, California Department of Public Health, and California Department of Corrections and Rehabilitation. Various state agencies file complaints with BRN regarding nurses at their respective facilities. The chief of investigations stated that BRN also cooperates with other health boards at Consumer Affairs. She stated that the health boards are expected to notify one another if a health provider with multiple types of licenses, such as a nurse with a chiropractic or pharmacist license, is under

investigation by any of these other health boards and, if warranted, to share information pertaining to their ongoing investigations. Additionally, according to BRN's assistant executive officer, Consumer Affairs' other health boards have a mutual understanding to forward to BRN complaints they receive related to registered nurses.

Scope and Methodology

The Business and Professions Code section 2718 requires BRN to contract with the California State Auditor's Office to conduct a performance audit of BRN's enforcement program. We list the objectives the law requires and the methods we used to address the objectives in Table 1.

Assessment of Data Reliability

In performing this audit, we obtained electronic data files from the BreEZe system. The U.S. Government Accountability Office, whose standards we are statutorily required to follow, requires us to assess the sufficiency and appropriateness of computer-processed information that we use to support our findings, conclusions, or recommendations. In performing this audit, we assessed the reliability of electronic data files extracted from the BreEZe system for the purpose of calculating the length of time BRN takes to process complaints, and to determine the number of open complaints.

To accomplish this assessment, we performed data-set verification and electronic testing of key data elements and found no errors. However, as we discuss in the Audit Results, the BreEZe system has weaknesses in the controls used to validate data upon entry into the system. Specifically, BreEZe does not require staff members to enter activities into the system following BRN's established business process. As a result, we found many inconsistencies in the order in which complaint processing activities occurred and had to exclude 17 percent of the complaints from our analysis that we present in Figures 6 and 7 on pages 33 and 35, respectively, in the Audit Results. Six of the 40 complaints we reviewed were included in this population. For the remaining 34 complaints we reviewed, we compared selected dates in the system to dates reflected on available documentation in the complaint files and identified some errors. We describe these errors and other concerns we identified in our review of selected dates related to the 34 complaints in the Audit Results. Based on these issues, we determined that the BreEZe system data were not sufficiently reliable for the purpose of the audit. Although this determination may affect the precision of the numbers we present, there is sufficient evidence in total to support our audit findings, conclusions, and recommendations.

Table 1
Audit Objectives and the Methods Used to Address Them

AUDIT OBJECTIVE	METHOD
A An evaluation of the quality and consistency of, and compliance with, complaint processing and investigation.	<ul style="list-style-type: none"> • Reviewed relevant state laws, regulations, and procedures for complaint processing and investigating complaints. • Interviewed relevant staff members from the Board of Registered Nursing (BRN) to determine how the intake analysts, investigators, supervisors, and expert witnesses performed their work and obtained relevant documents. We also interviewed relevant staff members from the Division of Investigation (DOI) of the California Department of Consumer Affairs (Consumer Affairs) to determine how investigators performed their work and obtained relevant documents. • Judgmentally selected and reviewed 40 complaints—20 investigated by BRN and 20 investigated by DOI—that BRN resolved between January 1, 2013, and June 30, 2016, to determine whether BRN consistently processed complaints and whether BRN and DOI investigators conducted investigations in a quality manner and in accordance with applicable requirements. • Interviewed relevant staff members to discuss anomalies and findings from our review of 40 complaints and determined the reasons why they occurred. • Obtained listings from BRN and DOI displaying the complaints for which supplemental investigations were requested due to insufficient evidence. For all of the complaints on the lists, we determined the responsible party that requested the supplemental investigation. We selected 20 complaints—10 from BRN and 10 from DOI—from these lists and determined the reasons the complaints were returned, and interviewed staff members from BRN and DOI for their perspective. • Assessed the law related to BRN's intervention program and interviewed BRN's assistant executive officer regarding BRN's practices related to addressing complaints of those nurses who choose to enter the program. • Obtained information from BRN regarding the number of nurses in its contractor-managed intervention program who fail to successfully complete the program. Using this information, we also assessed how long these nurses were in the program.
B An evaluation of the consistency and adequacy of the application of board sanctions or discipline imposed on licensees.	<ul style="list-style-type: none"> • Identified and reviewed the relevant laws, regulations, and BRN procedures for administering sanctions and disciplining registered nurses who have violated the Nursing Practice Act. • Interviewed relevant BRN managers and staff members, and gathered documentation to determine how the discipline unit applies disciplinary guidelines when developing settlements to nurses and recommendations to BRN's nine-member board (BRN board).
C An evaluation of the accuracy and consistency in implementing the laws and rules affecting discipline, including adherence to the Division of Investigations Case Acceptance Guidelines (Consumer Protection Enforcement Initiative Model), as revised July 1, 2014.	<ul style="list-style-type: none"> • Using the 40 selected complaints identified in Objective A, determined whether BRN accurately applied sanctions or discipline on licensees. We compared BRN's actions for imposing discipline against relevant legal and procedural criteria. Because our selection of 40 complaints did not involve similar allegations, we could not speak to the consistency of whether the BRN board imposed consistent discipline for these complaints. • Using a judgmental selection of 20 complaints with similar violations for which BRN imposed discipline from January 1, 2013, through June 30, 2016, determined whether the BRN board accurately and consistently imposed discipline for these complaints. We compared BRN's actions for imposing discipline against relevant legal and procedural criteria. • Obtained a report from BreEZe to identify the total number of complaints in which the BRN board did not adopt the administrative law judge's proposed decision and instead issued its own disposition during the period January 1, 2013, through June 30, 2016. We selected 20 complaints from this report and identified the BRN board's reasons for not adopting the administrative law judge's proposed decision and determined whether the administrative law judge's and BRN board's respective decisions were made in accordance with BRN's <i>Recommended Guidelines for Disciplinary Orders and Conditions of Probation</i>. We concluded that the 20 complaints we reviewed were decided in accordance with these recommended guidelines. • We describe our methodology for evaluating BRN's adherence to the Consumer Protection Enforcement Initiative (CPEI) complaint prioritization guidelines (complaint guidelines) under audit objective F.
D An evaluation of the time frames for completing complaint processing, investigation, and resolution.	<ul style="list-style-type: none"> • Identified and documented the relevant laws, regulations, goals, or policies that affect the time frames for BRN's complaint processing and resolution. • Using data obtained from BreEZe, assessed BRN's overall time frames for resolving consumer complaints for investigated complaints that it resolved between January 1, 2013, and June 30, 2016. • Using data obtained from BreEZe, assessed BRN's time frames for completing key stages in its complaint resolution process for investigated complaints that it resolved between January 1, 2013, and June 30, 2016.

AUDIT OBJECTIVE	METHOD
E An evaluation of staff concerns regarding licensee disciplinary matters or procedures.	Interviewed relevant management personnel and staff members to obtain their perspective on how effectively and efficiently BRN enforced discipline, including issues with the intake and investigation process that may affect discipline. Interviewed management personnel to gain their perspective on staff concerns. Generally, most employees we interviewed did not express concerns regarding licensee disciplinary matters or procedures. However, some staff expressed concerns regarding a lack of training related to their job duties. We include a statement regarding these concerns and management's perspective beginning on page 44 in the Audit Results, where we describe BRN's lack of a formal training program.
F An evaluation of the appropriate utilization of licensed professionals to investigate complaints.	<ul style="list-style-type: none"> • Obtained and assessed for adequacy BRN's policies and procedures for complaint intake and assignment to investigators. Interviewed relevant staff members to understand how the process works, including whether they are following the CPEI complaint guidelines, and obtained an understanding of how complaints are assigned. • For the 40 complaints identified from Objective A, determined whether BRN appropriately assigned investigations based on the allegation's severity in accordance with the complaint guidelines. For any assignments that deviated from the complaint guidelines, we reviewed available documents and obtained BRN staff members' perspective regarding the reason for the deviation. • Using a judgmental selection of 10 complaints from January 1, 2016, through June 30, 2016—subsequent to the effective date of state law requiring healing arts boards (health boards) to follow the complaint guidelines—determined whether BRN properly assigned complaints to the appropriate investigative units in accordance with the complaint guidelines. We discussed our findings with key management personnel to obtain their perspective. • Obtained information from DOI based on a recent review it conducted of the number of urgent- and high-priority complaints BRN was investigating between December 2014 and June 2016 that it should have referred to DOI to investigate in accordance with state law and Consumer Affairs' direction. • Determined the minimum qualifications for employment for BRN's non-sworn investigators and for DOI's sworn investigators. • Obtained relevant personnel documents from BRN and Consumer Affairs and determined whether a selection of five BRN special investigators and five DOI investigators met the minimum qualifications for hire. We concluded that the 10 investigators we reviewed met the minimum qualifications for hire.
G An evaluation of the adequacy of the board's cooperation with other state agencies charged with enforcing related laws and regulations regarding nurses.	<ul style="list-style-type: none"> • Interviewed staff members and gathered relevant documents (contracts or memoranda of understanding) to determine BRN's collaboration with other state agencies, including other Consumer Affairs health boards, charged with enforcing laws regarding nurses. • Examined the relationship between BRN and other state agencies, particularly the Office of the Attorney General (Attorney General) and the Office of Administrative Hearings (Administrative Hearings), to determine whether there are opportunities to improve the sharing of relevant information among the various agencies. • To the extent possible, for nurses in our selection of 40 complaints from Objective A that have multiple licenses, determined whether and what type of discipline was issued by the other health boards. However, as we describe on page 50 in the Audit Results, BreEZe does not notify BRN of when discipline is imposed on a nurse, who has multiple licenses, by other health boards. Nevertheless, for nurses who had licenses issued by states other than California in our selection of 40 complaints, we confirmed that a federal database, Nursys, alerted BRN to disciplinary actions taken by other states' nursing boards.
H An evaluation of any existing backlog, the reason for the backlog, and the time frame for eliminating the backlog.	<ul style="list-style-type: none"> • Determined whether BRN had any complaints pending assignment to an investigator. Obtained a report from BreEZe listing the number of complaints that had been assigned to BRN's investigative unit, but that BRN had not yet assigned to one of its non-sworn investigators as of July 27, 2016. We analyzed this report to determine the number of complaints that had been pending assignment for more than 10 days, the amount that were urgent or high priority, and the average number of days they were pending assignment. • Interviewed BRN staff members to determine the reason for the backlog and whether BRN has a plan to reduce the backlog.
I An evaluation of the adequacy of board staffing, training, and fiscal resources to perform its enforcement functions.	<ul style="list-style-type: none"> • Determined whether BRN has conducted an analysis of its staffing and workload. • Obtained budget documents and budget change proposal requests for the last three fiscal years. Reviewed the material to determine whether BRN made requests to increase resources to improve efficiency, and whether it adequately justified these requests. • Obtained documentation on the BRN training program for staff and investigators. Determined how often BRN offers training specifically focused on conducting investigations of registered nurses. We also reviewed whether any of the training focuses on how to communicate effectively with other agencies. • By reviewing BRN's training materials and interviewing staff members, determined the extent of participation by the Attorney General and Administrative Hearings in the training of BRN's non-sworn investigators and DOI's sworn investigators.

Audit Results

The Board of Registered Nursing Has Failed to Resolve Consumer Complaints in a Timely and Adequate Manner

The Board of Registered Nursing's (BRN) lack of sufficient oversight has led to delays in resolving consumer complaints. The California Department of Consumer Affairs (Consumer Affairs) expects the healing arts boards (health boards) to resolve complaints within 18 months.³ However, for the majority of the complaints we reviewed, all of which underwent an investigation, BRN failed to ensure that it met this 18-month goal. Specifically, BRN did not ensure that it promptly moved complaints through the various stages of the complaint resolution process, such as assigning complaints to an investigative unit and referring complaints to an expert witness, within a reasonable time frame. We determined that BRN management did not set formal goals for staff to achieve when processing complaints, nor did it monitor the status of complaints as they were moving through key stages of the process. As a result, it has missed the opportunity to identify steps in the complaint resolution process that need improvement. Unnecessary delays in the complaint resolution process enable nurses who are the subject of allegations to continue practicing, which could risk patient safety.

Insufficient Oversight Has Contributed to BRN's Failure to Resolve Complaints Within a Reasonable Time Frame

BRN's lack of oversight has led to delays in resolving consumer complaints. In 2010 Consumer Affairs established a goal in accordance with its CPEI, setting the expectation that all health boards resolve complaints within 18 months. However, for the majority of the investigated complaints that we reviewed, which were resolved between January 1, 2013, and June 30, 2016, BRN failed to ensure that it met this 18-month goal. According to BRN's chief of complaint intake and investigations (chief of investigations), inadequate staffing and inefficiencies caused by its information system, BreZE, were the primary causes for delays. During that time frame, BRN's enforcement staff grew considerably, by more than 60 positions. Nevertheless, we found that BRN's failure to set goals for how long key stages in the complaint resolution process should take, coupled with a lack of monitoring of complaint status by management, contributed to lengthy complaint resolution time frames.

³ Consumer Affairs' 2010 Consumer Protection Enforcement Initiative (CPEI) specifies that the health boards should resolve complaints within 12 to 18 months. For purposes of this report, we assessed BRN's timeliness of resolving complaints by comparing it to the high end of the goal, 18 months.

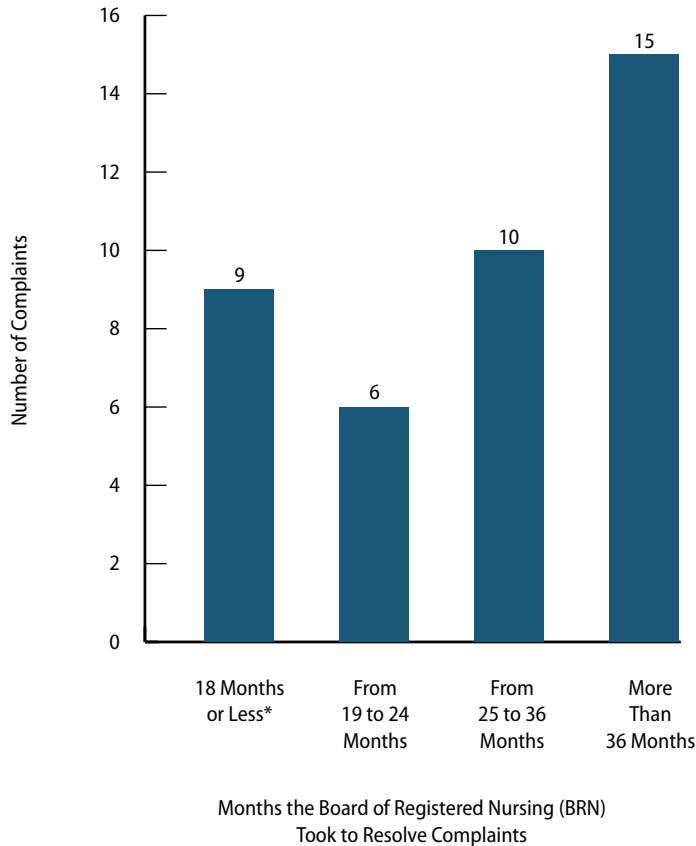
BRN failed to resolve 31 of the 40 complaints we reviewed within the 18-month goal, and for 15 of those 31 complaints BRN took longer than 36 months to resolve them.

During our review of 40 complaints that underwent an investigation, we found that BRN struggled to resolve complaints in a timely manner, which potentially placed additional patients at risk. As shown in Figure 3, BRN failed to resolve 31 of the 40 complaints within the 18-month goal, and for 15 of those 31 complaints BRN took longer than 36 months—more than twice as long as the CPEI goal—to resolve the complaints.⁴ Further, we found that BRN took longer than 48 months to resolve seven of those 15 complaints, six of which included allegations of patient harm resulting from a nurse’s actions. Delays such as these could have potentially serious consequences for patients these nurses subsequently cared for. With the exception of certain circumstances that we describe in the Introduction—in which BRN’s nine-member board (BRN board) takes immediate action on a nurse’s license—a nurse who has allegedly committed a violation or crime may continue to have direct involvement with patients while his or her case is being resolved. Therefore, the longer it takes BRN to resolve complaints, the greater the number of patients who may receive treatment from a nurse who could expose them to harm. For example, we reviewed one complaint alleging that the nurse inappropriately left medication near patients’ bedsides, inappropriately administered medication without following physicians’ orders, forged prescriptions, and stole medications. While BRN was investigating this complaint, it received an additional complaint against the nurse alleging similar misconduct. Although the nurse ultimately surrendered her license, she was able to practice for more than three years, potentially risking patient safety.

We found that a primary reason for the delays in BRN’s processing of these complaints was its failure to ensure complaints moved through the various stages of the complaint resolution process in a timely manner, a concern we describe in more detail in the next section. For example, in one instance in which a nurse allegedly overmedicated a patient and did not accurately document the medication administered and times delivered, BRN took roughly 15 months to assign the complaint to Consumer Affairs’ DOI. Interestingly, we noted that the complainant sent a letter to BRN stating her belief that it had been over a year since she filed the complaint and, to her knowledge, no disciplinary action had been taken. It is reasonable to conclude that this letter caused BRN to finally take action, because it assigned the complaint to DOI for investigation about three weeks after receiving the letter. Further, nearly another year later, BRN referred the complaint to an expert witness, who requested additional evidence before she could opine on the case. However, because BRN, which processes supplemental investigation requests, repeatedly failed to

⁴ Although Consumer Affairs’ Division of Investigation (DOI) investigates some of the complaints BRN receives as we describe later, BRN is responsible for the entire complaint resolution process, including steps that come before and after the investigation.

Figure 3
Complaint Resolution Times for a Selection of Investigated Complaints Resolved Between January 1, 2013, and June 30, 2016



Source: California State Auditor’s analysis of a selection of 40 investigated complaints from BRN’s complaint files that were resolved between January 1, 2013, and June 30, 2016.

* According to its Consumer Protection Enforcement Initiative, the California Department of Consumer Affairs expects healing arts boards to resolve complaints within 18 months.

respond to the expert witness’s numerous requests for this supplemental information in a timely manner, it ultimately took more than 30 months for BRN to receive the expert witness’s final report regarding the complaint. Although BRN’s board ultimately revoked the nurse’s license, the nurse remained licensed to practice for nearly 70 months, or almost six years, while BRN attempted to resolve the complaint. In another example, we found that BRN took more than eight months to assign to an investigator a complaint alleging that a nurse administered chemotherapeutic medication to a patient at an excessively fast rate. BRN’s significant delay in assigning the complaint to one of its non-sworn investigators, in part, allowed the nurse’s license to remain active for 28 months while BRN investigated the complaint. The expert witness concluded that the nurse was grossly negligent and incompetent in treating the patient and, ultimately, this nurse surrendered her license.

In addition, although Consumer Affairs has established a formal overall goal for the time frame within which BRN and other health boards should resolve complaints, BRN has not established formal goals for key stages of the complaint resolution process. The chief of investigations stated that although BRN has informal goals for certain stages, it has not developed formal goals. For example, as shown in the text box, BRN has an informal goal for how long it should take its staff to assign a complaint to an investigative unit. However, this goal is limited in value without a corresponding goal for how long it should take to actually assign the complaint to a specific investigator. Further, BRN's management does not routinely monitor or track staff members' progress in achieving even these informal goals. Without meaningful and formal goals for its staff to achieve, BRN risks that staff members will not prioritize their work to ensure that they process complaints as efficiently and quickly as possible. Further, without formal goals, BRN is hindered from tracking its progress in processing complaints, identifying areas where delays occur, and implementing mitigating measures to reduce delays.

Board of Registered Nursing's Informal Goals by Key Stage of the Complaint Resolution Process

STAGE	INFORMAL GOAL
Assign to an investigative unit	30 to 45 days
Assign to an investigator	None; based on urgency
Conduct investigation	None
Determine whether an expert witness is needed and assign to an expert	11 days*

Sources: Documentation provided by the Board of Registered Nursing (BRN) and its chief of complaint intake and investigations.

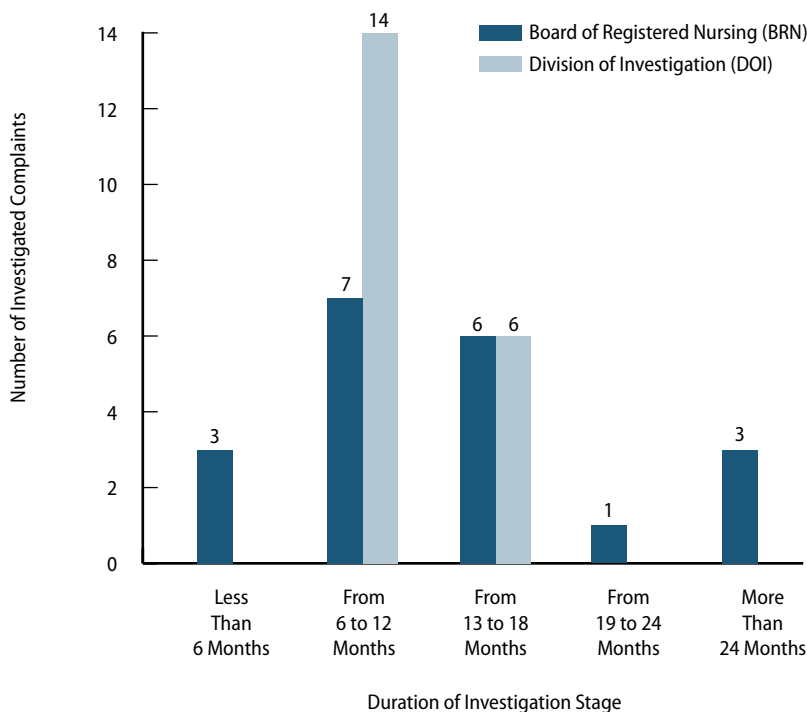
* BRN established its informal 11-day goal for assignment to an expert witness in July 2014. It did not have an informal goal for this milestone before this time. In July 2016, BRN changed this informal goal by increasing it to 25 days.

A lengthy investigation stage, which includes the time it takes either BRN or DOI to assign a complaint to an investigator and complete the investigation, contributed to the time it took BRN to resolve complaints. As shown in Figure 1 on page 11 in the Introduction, either BRN's non-sworn investigators or DOI's sworn peace officers investigate complaints against nurses. Of the 40 complaints we reviewed, 20 were investigated by BRN and 20 were investigated by DOI. As shown in Figure 4, of the 20 complaints that BRN referred to its investigative unit for review, 10 were not assigned to an investigator and the investigations completed for more than one year, with three of the 10 taking more than two years to be assigned and the investigations completed. For example, we reviewed one complaint alleging that a nurse failed to remove a suction catheter before closing the surgical site, necessitating a surgical reopening that resulted in the patient developing pneumonia and requiring subsequent surgeries. Although the complaint alleges patient harm, BRN took seven months to assign the complaint to an investigator and another nearly 18 months to complete the investigation. Further, BRN took more than 12 months to assign the complaint to its investigative unit. Another complaint alleged that a supervising nurse failed to take sufficient action against a subordinate nurse whose conduct may have endangered patients. In this case, BRN took more than 22 months to assign the complaint to a non-sworn investigator and another 24 months to finish investigating the complaint. Although these complaints were ultimately closed without BRN taking action on the nurses' respective licenses, BRN could not have foreseen this outcome during the early stages of the complaints. With allegations of potential harm or danger to patients, we expected to see

BRN processing the complaints with a sense of urgency. However, according to the chief of investigations, BRN did not have the resources to quickly process complaints through each stage, and it did not consistently monitor the complaint resolution process.

Similarly, Figure 4 shows that for six of the 20 complaints we reviewed that DOI investigated, DOI took longer than one year to assign the complaints to a sworn investigator and complete the investigations. For example, one complaint alleged that a nurse falsified physicians' signatures on patient transportation order forms. Although DOI assigned the complaint to a sworn investigator relatively quickly—within nine days—the investigation itself took 17 months. The complaint was eventually closed without BRN taking action against the nurse. According to DOI's supervising investigator, most investigations take between nine months and one year to conduct, and she acknowledged that some may take longer to finalize because of investigator workloads, the prioritization of urgent cases, and the ability to obtain records from a health facility. She indicated that DOI monitors the time it takes to complete investigations but does not routinely analyze the data to identify trends causing delays in investigation processing.

Figure 4
Time Frame for Completing the Investigation Stage for a Selection of Complaints Resolved Between January 1, 2013, and June 30, 2016



Source: California State Auditor's analysis of the amount of time BRN and DOI took to complete the investigation stage for a selection of 40 complaints resolved between January 1, 2013, and June 30, 2016.

Note: The investigation stage includes the time it took to assign a complaint to an investigator once received in the applicable investigative unit, as well as the time it took the investigator to complete the investigation.

When a substantial portion of the complaint resolution process is consumed by the time it takes to assign a complaint to an investigator and investigate the complaint, BRN is hindered from processing the complaint in a timely manner. Specifically, other entities, such as expert witnesses, the Office of the Attorney General (Attorney General), and, for those cases that are adjudicated, the Office of Administrative Hearings, often also have to act on the complaint. Thus, long time frames for assigning and investigating complaints jeopardize BRN's and DOI's ability to achieve the 18-month goal for overall complaint resolution. These delays emphasize the need for BRN and DOI to establish a formal goal for completing each key stage of the complaint resolution process and to consistently meet those goals.

According to the chief of investigations, many factors can contribute to the length of an investigation, including the complexity and severity of a complaint, the availability of key witnesses, and the ability to access key documents that may be necessary to complete an investigation. Although we recognize these factors, without establishing formal goals for investigators to work toward and tracking the reasons for delays in the investigation stage, investigators may miss opportunities to focus their evidence gathering and to better organize both time and resources to finalize investigations as efficiently as possible. Formal goals for investigators will also aid supervising investigators' efforts to monitor whether investigations are being conducted at an effective pace and to identify the reasons for any delays.

BRN has pointed to a lack of resources as one of the reasons for the delays we identified in its processing of complaints. Specifically, the chief of investigations stated that from 2010 through 2015 BRN was expanding its enforcement division staff, but did not have enough staff to meet the demands of its complaint caseload. During that time frame, BRN ultimately requested and received 65 positions in its enforcement division. Although BRN indicated that it continues to believe it could use additional enforcement staff, it has not attempted to request additional resources from the Department of Finance given that it recently received these positions. However, as we describe later in the Audit Results beginning on page 35, BRN has not adhered to specific direction from Consumer Affairs, as well as recent state law, regarding the types of complaints it must forward to DOI for its investigation. Essentially, because BRN is investigating more complex complaints that it should forward to DOI for its sworn peace officers to investigate, BRN's non-sworn investigators' caseloads are at maximum capacity, which affects their ability to complete investigations in a timelier manner.

Because BRN is investigating more complex complaints that it should forward to DOI for its sworn peace officers to investigate, BRN's non-sworn investigators' caseloads are at maximum capacity, which affects their ability to complete investigations in a timelier manner.

Further, BRN has pointed to inadequate monitoring of the complaint resolution process and issues it has faced in obtaining information regarding complaint status from BreEZe. Specifically, the chief of investigations stated that, until recently, BRN could only run reports

that provided information on overall complaint processing time frames, rather than how long specific phases in the complaint resolution process took, such as how long it took to refer complaints to an investigative unit or to an expert witness. Instead, she explained that BRN's managers would have to periodically check in with staff to determine their caseloads or manually enter specific information about individual complaints into BreEZe to identify aging status. She explained that the coding and data in BreEZe was, and still is to an extent, not always accurate and this made tracking and evaluating the status of the large volume of complaints in BreEZe nearly impossible. Without the ability to produce reliable reports, the chief of investigations explained that BRN management did not have an effective way to track how quickly staff members were processing complaints during each stage of the resolution process, nor could they strategically identify those stages that may be contributing to a backlog in its process. She stated that, as a result, BRN failed to meet the 18-month goal for resolving complaints.

According to the chief of investigations, BRN recently began using a software product to more effectively produce reports using BreEZe data, which has improved BRN's ability to monitor the complaint resolution process. She explained that, as of April 2016, BRN management can generate reports using BreEZe data to run specific workload and complaint aging reports. For instance, she provided examples of reports generated by the new software product that she stated BRN managers can use to review the time it takes for support staff to enter complaints into BreEZe once they are received, whether staff members enter the complexity of the complaint accurately into BreEZe, and how long complaints have been pending. According to the chief of investigations, BRN managers use these reports to track the progress of complaint processing in an effort to shorten overall complaint resolution time frames. However, she stated that because BRN's use of this software product is a new capability, as of October 2016, it has not begun to evaluate this data to identify trends or deficiencies during key phases in the complaint resolution process. Although this is an important step toward ensuring that the complaint resolution process is more efficient, without formal goals and routine monitoring by managers to determine whether staff members are achieving the established goals and to understand the reasons for any delays, BRN risks that it is not mitigating the factors that cause delays and not processing complaints as promptly as it should, which may place the public at risk of harm. In addition, although BRN can now generate some reports regarding complaints, as we discuss later in the Audit Results on page 32, the data in BreEZe is not always accurate, calling into question the reliability of the data in these new reports.

Although BRN can now generate some reports regarding complaints, the data in BreEZe is not always accurate, calling into question the reliability of the data in these new reports.

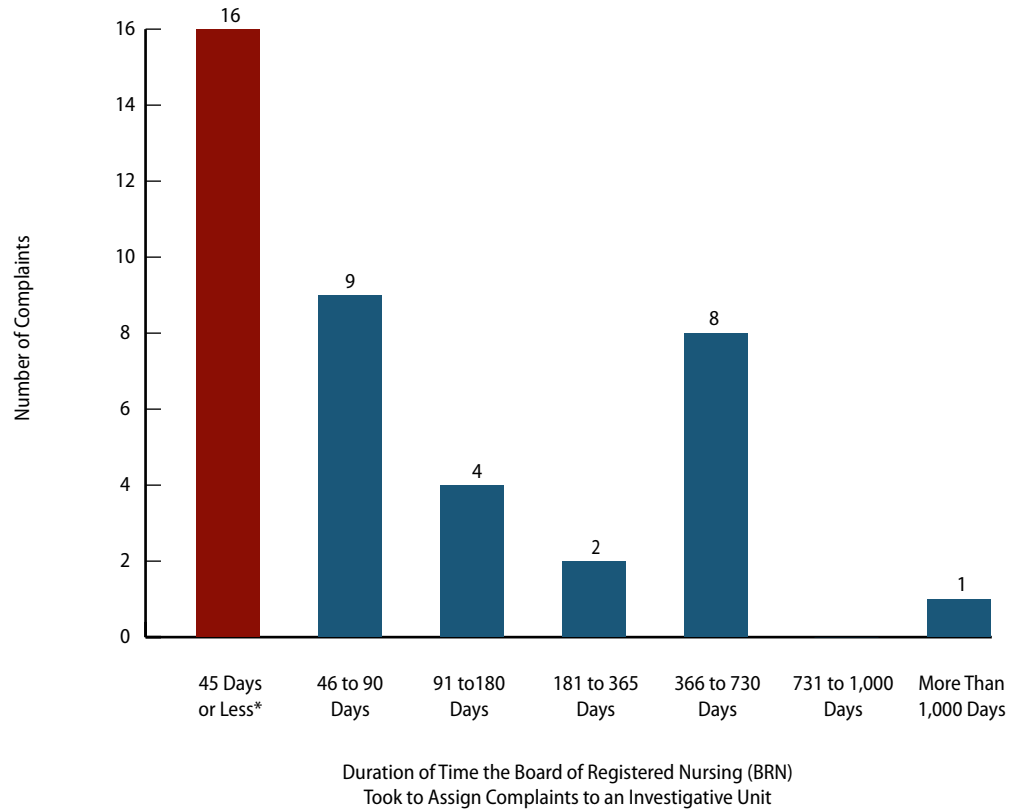
BRN took more than a year to assign nine of the 40 complaints to an investigative unit—clearly exceeding BRN’s informal goal of assigning a complaint within 45 days of receipt.

BRN Has Not Ensured That Complaints Move to the Next Stage of the Resolution Process When Ready, Which Has Contributed to a Backlog of Complaints Awaiting Investigation

Our review of 40 complaint files found that BRN took excessive amounts of time to assign more than half of them to either BRN’s investigative unit or DOI’s investigative unit. When we asked whether BRN had established a goal for how long it should take to assign a complaint to an investigative unit after receiving it, the chief of investigations stated that BRN’s informal goal is 30 to 45 days. However, as shown in Figure 5, BRN took more than 45 days—the high end of its goal—to assign 24 of the 40 complaints we reviewed to an investigative unit, the stage that precedes assignment of the complaint to an investigator. Further, the figure shows that BRN took more than a year to assign nine of the 24 complaints to an investigative unit—clearly exceeding BRN’s informal goal of assigning a complaint within 45 days of receipt.

Such delays not only prolong the length of time it takes BRN to resolve complaints, but they also allow nurses who may have committed serious violations to continue caring for patients. For example, one of the complaints we reviewed alleged that a nurse midwife failed to consult with an obstetrician during a patient’s labor and that, as a result, the patient’s baby was born with neurological damage. Although BRN initially assigned the complaint to its investigative unit, the chief of investigations acknowledged that BRN did not take any action on the complaint for more than two and a half years before assigning it to DOI for investigation, well beyond BRN’s informal goal of assigning a complaint to an investigative unit within 45 days. The nurse who was the subject of the complaint was allowed to continue practicing during the more than four years BRN took to decide to close the complaint, until the expert witness concluded there was no evidence that early intervention in the patient’s labor would have improved the outcome. Nonetheless, because of the severity of the allegation and the fact that BRN did not yet know what the outcome of an investigation would conclude, we expected BRN to quickly assign the case for investigation to ensure it was resolved in a timely manner and that the nurse did not cause any harm to the public by continuing to practice. When we asked BRN’s chief of investigations why this particular delay occurred, she acknowledged that at the time BRN was processing this complaint, BRN had very few complaint intake staff, the analyst did not effectively move the complaint forward, and BRN’s management was not effectively monitoring complaints or staff caseloads.

Figure 5
Timeliness of the Board of Registered Nursing’s Assignment of Complaints to an Investigative Unit for a Selection of Complaints Resolved Between January 1, 2013, and June 30, 2016



Sources: California State Auditor’s analysis of the amount of time BRN took to assign a selection of 40 complaints resolved between January 1, 2013, and June 30, 2016, to an investigative unit, and information provided by BRN’s chief of complaint intake and investigations.

* BRN has an informal goal to assign complaints to an investigative unit within 30 to 45 days.

In another example, we found that BRN delayed assigning to DOI’s investigative unit a complaint alleging that a nurse caused a toddler’s death by administering the incorrect dosage of medication. According to the complaint file, BRN initially assigned the complaint to its investigative unit, and BRN’s chief of investigations acknowledged that BRN did nothing with the complaint for roughly 18 months. She indicated that the complaint should have been prioritized due to its sensitivity and referred to DOI faster. This nurse was allowed to continue practicing for 39 months while BRN processed the complaint. Ultimately, the complaint was referred to an expert witness who determined, based in part on autopsy results, that the evidence was inconclusive as to whether the nurse’s conduct resulted in the child’s death. However, BRN’s board concluded that the nurse violated the Nursing Practice Act (Nursing Act) by inaccurately recording the dosage of medication administered to the toddler, and the board placed the nurse on

As of July 27, 2016, 138 complaints were pending assignment to a BRN non-sworn investigator for more than 10 days and, on average, had been awaiting assignment to a BRN non-sworn investigator for 77 days.

three years of probation. Essentially, this discipline allowed the nurse to continue practicing with a restricted license under the terms and conditions of probation established by BRN's board. BRN's chief of investigations acknowledged that BRN should never have allowed the delay to occur, which she attributed to a lack of monitoring processes and staffing issues at the time. Such delays unnecessarily prolong the complaint resolution process, while the subject of the allegation may continue to practice, which potentially poses a safety risk to patients.

In addition to the deficiencies and time delays described previously, BRN accumulated a notable backlog of complaints awaiting assignment to one of its non-sworn investigators. As of July 27, 2016, according to a BreZze report provided by BRN, at least 184 complaints were pending assignment to a BRN non-sworn investigator. Of these, 138 were pending assignment for more than 10 days and, on average, had been awaiting assignment to a BRN non-sworn investigator for 77 days, with the oldest complaints pending assignment for more than 180 days, or more than six months. Table 2 shows these complaints, broken down by allegation type. Of most concern is that 71 of these complaints, or 51 percent, involved allegations that, according to Consumer Affairs' complaint prioritization guidelines (complaint guidelines), should have been categorized as urgent or high priority and been promptly referred to DOI for investigation. However, BRN instead forwarded these complaints to its investigative unit. As an example of the severity of these complaints, one complainant alleging patient harm stated that a nurse failed to provide proper care to a patient with an infected wound, which eventually led to the patient developing an infection that caused kidney failure and the patient being placed on life support. As of July 27, 2016, this complaint had been pending assignment to a BRN non-sworn investigator for 105 days. In another example, a complainant alleged that a nurse who operates an assisted living facility was practicing with an expired license and was overmedicating patients during the night shift due to low staff support. As of July 27, 2016, this complaint had been awaiting assignment to a BRN non-sworn investigator for nearly 70 days. These examples underscore the importance of BRN taking steps to ensure that it assigns complaints promptly and, in particular, that it assigns complaints of urgent or high priority to DOI.

When we asked BRN's chief of investigations about the significant delays we identified, she acknowledged that the complaints should have been assigned more quickly and explained that, although BRN has an informal goal of assigning a complaint to an investigative unit within 45 days, it lacks a goal specifying the time frame within which complaints should be assigned to an investigator. She also pointed to a lack of resources as one reason for the delays,

explaining that all of BRN’s existing non-sworn investigators already had a full caseload of 20 complaints, a workload that we describe later. The chief of investigations stated that increased functionality that was added to BreEZe in April 2016 will increase her ability to monitor the aging of complaints. Although this may be an improvement, without having an action plan that specifies how BRN will ensure it promptly prioritizes and forwards complaints to an investigator, BRN risks that it will continue to face a backlog of complaints pending assignment to an investigator.

Table 2
Length of Time Complaints, by Allegation Type, Had Been Pending Assignment to a Board of Registered Nursing Non-Sworn Investigator, as of July 27, 2016

ALLEGATION TYPE	NUMBER OF COMPLAINTS UNASSIGNED FOR MORE THAN 10 DAYS	AVERAGE DAYS PENDING ASSIGNMENT	HIGHEST NUMBER OF DAYS A COMPLAINT HAS BEEN UNASSIGNED
Urgent or High Priority			
Actual/potential patient harm	15	65	135
Conviction	1	127	127
Drug theft/drug abuse	10	62	139
Fraud/theft	6	96	183
Gross negligence	11	78	170
Incompetence	3	47	56
Patient death	5	106	162
Unlicensed activity	9	58	140
Unprofessional conduct	11	74	181
Subtotals	71	79	
Routine Priority			
Actual/potential patient harm	11	78	156
Conviction	3	64	107
Drug theft/drug abuse	1	75	75
Gross negligence	2	52	76
Incompetence	26	98	174
Unprofessional conduct	24	81	198
Subtotals	67	75	
Totals	138	77	

Sources: California State Auditor’s analysis of data from the California Department of Consumer Affairs’ BreEZe information system, as well as a manual review of selected complaint files.

Note: Days are measured from the date the complaint was assigned to the Board of Registered Nursing’s investigative unit.

We found that BRN frequently exceeded its informal goal for referring complaints to an expert witness for review after either DOI or BRN completed its investigation.

Additionally, we found that BRN frequently exceeded its informal goal for referring complaints to an expert witness for review after either DOI or BRN completed its investigation. As described in the previous section, BRN's chief of investigations stated BRN did not have a goal for assigning complaints to an expert witness until July 2014, and the goal at that time was 11 days and remained the goal until July 2016, when it was increased to the current goal of 25 days. The current goal was established subsequent to the period we tested. Of the 40 complaints we reviewed, 27 required an opinion from an expert witness. We found that BRN took longer than 11 days to assign the complaint to an expert witness for 25 of the 27 complaints that required an expert witness review. For these 25 complaints, the time frame for assignment to an expert witness ranged from 16 days to 254 days. Six of these cases took more than 100 days to be assigned. Further, in one instance BRN assigned the case to an expert witness who did not have the appropriate expertise to review the complaint. The complaint alleged that the nurse gave a patient an injection in her elbow that resulted in an injury to the patient's arm. In the administrative law judge's formal decision regarding the complaint, the judge stated that BRN's expert witness had never personally performed the procedure in question, even though the expert witness was being asked to give an opinion about the nurse's competence in performing the procedure.

When we asked BRN's chief of investigations about the delays we identified in BRN's assigning of complaints to expert witnesses, she stated that one reason is that BRN has too few expert witnesses for the volume of complaints it receives. However, because BRN knows only how many expert witnesses it currently has, it was unable to provide us with the number of expert witnesses it had available during the time period we reviewed. Thus, we could not determine the extent to which this reason contributed to the delays we identified.

Despite being aware that it has too few expert witnesses, BRN has taken limited steps to increase this pool. BRN's chief of investigations explained that as of September 2, 2016, BRN had 195 active expert witnesses. However, BRN lacks historical data on how many expert witnesses it has had during a given year or at a certain point in time, which hinders its ability to assess how many expert witnesses would be sufficient to meet its needs. The chief of investigations stated that one of the largest obstacles BRN faces in recruiting expert witnesses is the low hourly pay rate nurses receive for these services. She explained that the hourly pay rate of \$75 is not very enticing for a nurse that works a full-time job. When we asked BRN if it has taken steps to increase the hourly pay rate, its assistant executive officer explained that once its fund condition improves and BRN is able to support the additional costs, it will seek to increase the expert witness hourly pay rate. Further, in

terms of BRN's recruiting efforts to increase its pool of expert witnesses, BRN's chief of investigations stated that it currently posts openings on its website, on Consumer Affairs' Facebook page, and on nurse association websites, and has distributed information at its board meetings for roughly the last four years. In addition, she stated that BRN receives referrals from the Attorney General and from other expert witnesses. Although these are all positive efforts, we believe there are other steps BRN could take to expand its pool of expert witnesses. For instance, BRN could include a question on its nurse license renewal application about whether the nurse is interested in becoming an expert witness. The chief of investigations stated that this would be possible, but pointed out a concern regarding available resources to process the applications. However, as described in a later section, BRN has not completed an analysis demonstrating its staffing needs. Further, BRN does not track the effectiveness of its recruiting efforts by identifying how applicants learned of the expert witness opportunity, according to the chief of investigations. As a result, BRN is missing the opportunity to identify which methods are most effective for recruiting expert witnesses. By focusing on these methods in the future, BRN could increase its pool of expert witnesses and better ensure that complaints are not unnecessarily delayed due to a lack of expert witnesses.

In conducting our review of complaints for which BRN requested an expert witness review, we identified that BRN failed to protect the confidential details—including specific information about the allegation and the nurse involved—surrounding its ongoing reviews of complaints when corresponding with expert witnesses. The *State Administrative Manual* requires end-to-end encryption or approved compensating security controls to protect confidential, sensitive, or personal information that is transmitted or accessed outside a secure network, such as email. Although BRN is subject to this requirement, we found that it communicated confidential information regarding active complaints via email without using encryption. Specifically, we identified several instances where BRN sent to expert witnesses' private email accounts information that listed the nurse's name and details surrounding the allegation for which BRN was conducting an investigation. We question how BRN ensured the protection of this confidential information since it does not know the security and privacy protection that exist on the expert witnesses' personal email accounts. As a result, BRN risks compromising private and confidential information. Further, if this information were to be compromised, it could discourage complainants who wish to remain anonymous from filing complaints for fear of retaliation from the respective nurse.

We found that BRN communicated confidential information regarding active complaints via email without using encryption.

BRN cannot easily determine from the BreEZe data whether the complaint was inappropriately closed at some point before it was assigned to the investigator or whether a closed complaint should have been reopened before it was assigned.

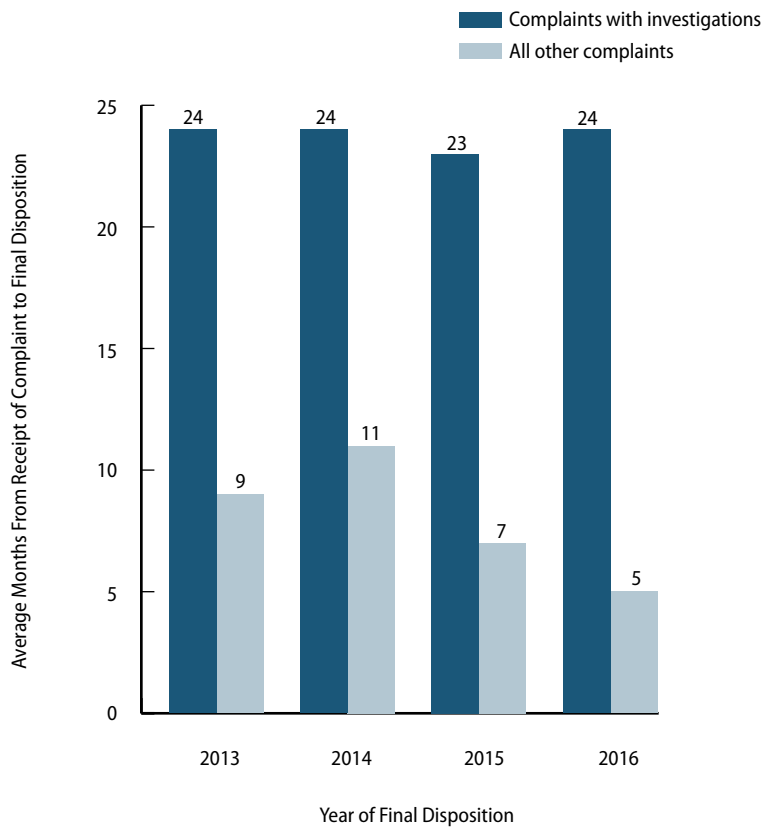
BRN Lacks Accurate Data Critical to Assessing Its Efficiency and Effectiveness in Resolving Complaints

BRN lacks reliable data to monitor the performance of its complaint resolution process because the system it uses to track complaints, BreEZe, has weaknesses in the controls used to validate data at the time of entry into the system (input controls). We found that BreEZe does not require staff members to enter activities in a manner that follows BRN's established business processes. For example, BRN staff members using BreEZe can assign a complaint to an investigator when the current status of the complaint is closed. For such complaints, BRN cannot easily determine from the BreEZe data whether the complaint was inappropriately closed at some point before it was assigned to the investigator or whether an appropriately closed complaint should have been reopened before it was assigned, as required by BRN's business process. Further, BreEZe does not capture information that identifies the order in which activities occurred when two or more activities occur on the same day. For example, staff members may assign a complaint to an investigator and then close the complaint on the same day. However, if the activities are not entered in the correct order, it may appear as if the complaint was closed and subsequently assigned to an investigator. Entries such as these can introduce errors into management reports or other analyses that depend on accurate data.

As a result of these control weaknesses, we identified errors in the data when we analyzed the nearly 550,000 complaint resolution activities for the population of more than 28,000 complaints in BreEZe. Specifically, because BRN staff members can enter new activities for complaints that are closed and can enter other activities that deviate from the normal sequence established by the business processes, we were unable to calculate the length of each stage of the complaint resolution process for 17 percent of the complaints. Ultimately, we had to remove 4,778 complaints from our analysis for these reasons. For the remaining data, we compared selected dates in the system for 34 complaints to available documentation in the complaint files. Of the 85 date fields we reviewed, we identified five errors. We also found that BRN's staff members were inconsistent in the date they chose to enter into BreEZe to reflect when BRN received 11 of the 34 complaints. Specifically, we found that BRN's staff members used dates other than the date BRN received the complaint, such as the date a staff member began processing the complaint, which could be several days after BRN received the complaint. Without data that accurately reflects when it received the complaint, BRN is hindered in determining whether it is adhering to state law, which we describe on page 51 in the Audit Results, that requires BRN to notify complainants of the initial action taken on a complaint

within 10 days of its receipt. Therefore, the remaining data could contain additional inaccurate dates that we cannot anticipate, which could cause other complaint resolution activities to appear in the incorrect order. Using the remaining data, we calculated the average processing times for complaints, as shown in Figure 6. Specifically, we found that complaints that included an investigation averaged about 24 months, while all other complaints averaged between five and 11 months.⁵

Figure 6
Board of Registered Nursing’s Average Processing Time for All Complaints Resolved Between January 1, 2013, and June 30, 2016



Source: California State Auditor’s analysis of data from the California Department of Consumer Affairs’ BreEZe information system.

Note: As discussed in the Audit Results, the BreEZe data we are presenting here may not be accurate due to data entry errors and the control weaknesses we identified in the system.

⁵ Complaints that do not include an investigation may take several months to complete because, for example, they involve a nurse’s arrest and require BRN to contact relevant law enforcement and court officials to obtain documentation regarding the arrest and the court’s decision.

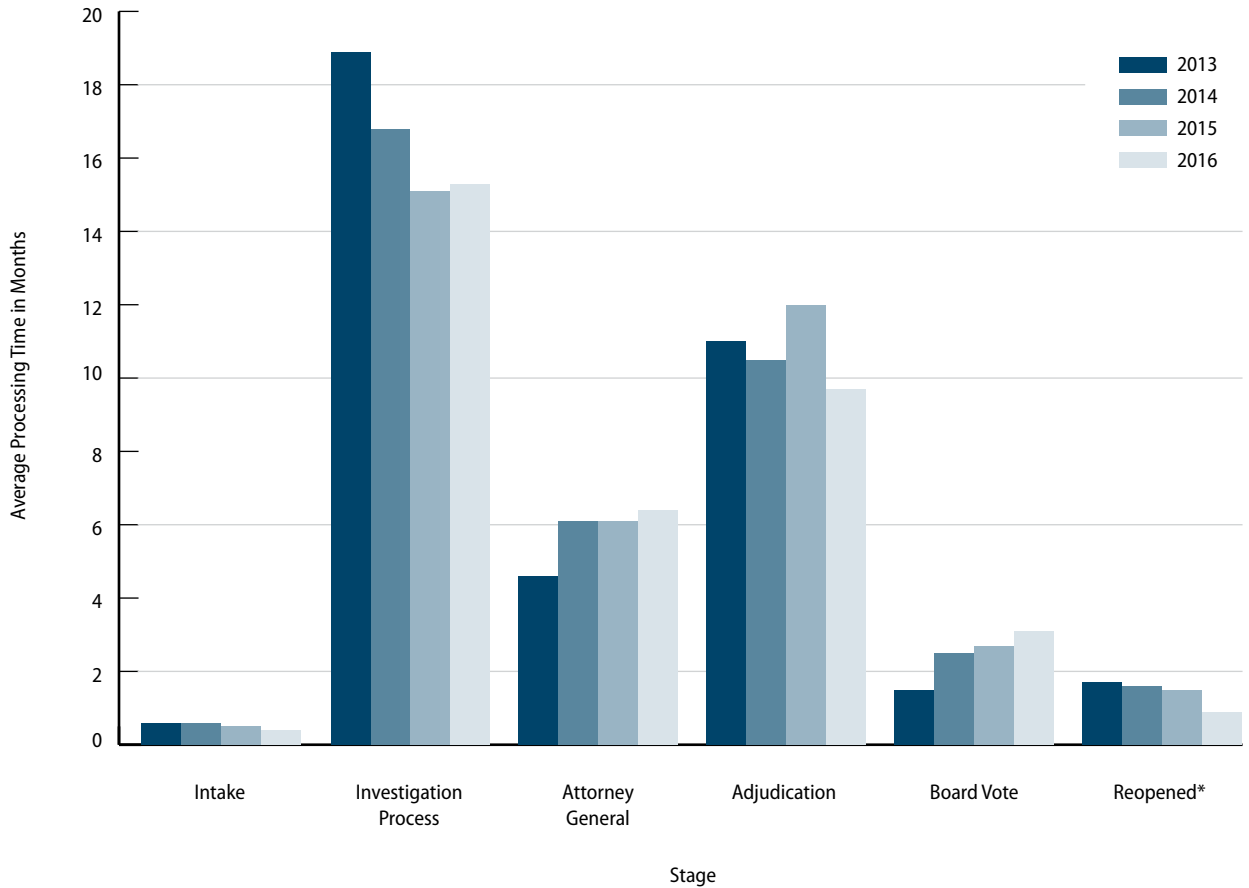
We calculated the average length of each stage of the complaint resolution process for complaints—the investigative process took the longest, averaging between 15 and 19 months.

Additionally, we calculated the average length of each stage of the complaint resolution process for complaints that included an investigation. Figure 7 shows that the investigative process took the longest amount of time, averaging between 15 and 19 months. We also identified 729 complaints that were open for 18 months or more. However, because staff members can enter activities out of sequence, such as by assigning a complaint to an investigator when the current status of the complaint is closed, as described earlier, some of these 729 complaints may actually be closed. Further, the results in Figure 7 may also be inaccurate because of the control weaknesses and data entry errors described previously.

When we inquired about the BreEZe data errors, BRN stated that it had identified similar errors when examining the results of its management reports. Until recently, these reports presented the time between the date that a complaint was received and a specific milestone, such as referral to the Attorney General. BRN is now measuring its performance on additional activities, such as the length of investigations for complaints that are subsequently forwarded to the Attorney General. BRN stated that it found inaccuracies in these more detailed measures, such as complaints with negative processing times and other complaints with very lengthy processing times. BRN's chief of investigations acknowledged that it has become difficult to manage caseloads because the BreEZe data are not reliable. Consequently, BRN cannot accurately assess its performance, and these errors have also left it without accurate data to assess its workload or staffing needs. Despite these issues, BRN currently takes a reactive approach to addressing errors in the BreEZe data by making manual adjustments to individual complaints when it identifies an error. However, BRN has not implemented preventive measures to help ensure that similar errors do not occur in the future. To overcome the problems we identified with data discussed in this section and to get an accurate measure of how long BRN takes to resolve complaints with an investigation, we tested the 40 complaints discussed throughout this report.

BRN could improve the accuracy of its data by requesting that Consumer Affairs make system modifications to BreEZe. These modifications could include input controls that restrict the type and sequence of activities that staff members can enter in a complaint record based on the complaint's resolution status and BRN's business processes, and would also capture information to accurately identify the order in which activities occurred. BRN's chief of investigations stated that it is open to requesting that Consumer Affairs modify BreEZe to include additional input controls and is working with Consumer Affairs to better understand the feasibility and complexity of adding such controls, as well as the cost associated with implementing them.

Figure 7
Board of Registered Nursing’s Average Time to Resolve Complaints by Stage and Year for Investigated Complaints Resolved Between January 1, 2013, and June 30, 2016



Source: California State Auditor’s analysis of data from the California Department of Consumer Affairs’ BreZEze information system.

Note: As discussed in the Audit Results, the BreZEze data we are presenting here may not be accurate due to data entry errors and the control weaknesses we identified in the system.

* A reopened period consists of the time between the reopening of a complaint and the start of one of the complaint stages.

BRN Did Not Always Assign Complaints to the Appropriate Professional for Investigation

BRN has not adhered to Consumer Affairs’ direction or state law requiring that it assign complaints categorized as urgent or high priority to DOI for investigation. As described in the Introduction, since 2009 Consumer Affairs has maintained complaint guidelines for the health boards to refer to when determining the priorities to assign to complaints. The complaint guidelines were revised in July 2014 and again in August 2016 and currently establish four categories for complaints, based on priority—urgent, high, and two levels that are considered routine. Although not specified in these complaint guidelines until August 2016, Consumer Affairs

We found that BRN chose to have its non-sworn investigators investigate numerous urgent- and high-priority complaints internally, rather than referring them to DOI.

and DOI officials maintain that they have consistently verbally communicated to the health boards, including BRN, that complaints categorized as urgent and high priority must be referred to DOI for investigation. However, during the course of our review, we found that BRN chose to have its non-sworn investigators investigate numerous urgent- and high-priority complaints internally, rather than referring them to DOI. BRN attributes its continued use of its non-sworn investigators to investigate these complaints to the complaint guidelines' lack of a specific, written requirement prior to January 2016 that urgent- and high-priority complaints be referred to DOI. Because of a lack of adherence by some health boards to Consumer Affairs' verbal direction regarding the referral of complaints, state law effective January 2016 requires the health boards to use the complaint guidelines to prioritize their complaints and investigative workloads and, once complaints are determined to be either urgent or high priority, to refer those complaints to DOI.

The director of Consumer Affairs indicated that DOI's investigators, who are sworn peace officers, are better suited to investigate complaints of urgent or high priority than BRN's investigators, who are not sworn. Table 3 compares the responsibilities and duties, as well as the required education and training, of BRN's and DOI's investigators. Both types of investigators can conduct independent criminal, civil, and administrative investigations. However, state law designates DOI's investigators as peace officers, which allows them to carry out certain duties non-sworn investigators cannot. For example, DOI's investigators can make arrests and serve search warrants. These investigators are also required to complete specific training prescribed by the Commission on Peace Officer Standards and Training, whereas BRN investigators are not required to complete any training specific to their enforcement duties.⁶

Despite Consumer Affairs' previous direction and the passage of a state law effective January 2016 requiring that BRN refer cases of urgent or high priority to DOI for investigation, we found that BRN continued to investigate many complaints internally. Specifically, we selected and reviewed 10 complaints alleging patient harm, unlicensed practice, substance abuse, or a drug-related offense—all allegations requiring an urgent- or high-priority designation—that were received between January 1, 2016, and June 30, 2016 subsequent to the change in law, and found that BRN did not always assign the complaint to DOI when required or accurately prioritize complaints. In fact, based on our review of the complaint files, BRN should have referred all of these complaints to DOI, but failed to refer seven of the 10 complaints. Although it referred two of these complaints to DOI after initially assigning them to a BRN

⁶ The Commission on Peace Officer Standards and Training is a legislatively established state commission whose responsibilities include setting training standards for law enforcement in California.

non-sworn investigator, it chose to investigate five complaints that we determined were of urgent or high priority because they involved patient death or unlicensed practice. For example, one complaint alleged that a nurse failed to follow proper procedures by leaving the room and not checking an alarm that sounded during a patient’s dialysis procedure, which may have contributed to the patient’s death. In another example, the complaint alleged that a nurse failed to assess a patient in the neurological intensive care unit for over two hours, which may have led to the death of the patient.

Table 3
Comparison of the Duties and the Education and Training Requirements for Non-Sworn and Sworn Investigators

SELECTED DUTIES AND RESPONSIBILITIES*	NON-SWORN INVESTIGATORS (BOARD OF REGISTERED NURSING)	SWORN INVESTIGATORS (DIVISION OF INVESTIGATION)
Conduct criminal, civil, and administrative investigations	✓	✓
Obtain and verify evidence to support administrative action, conferences, or prosecution	✓	✓
Serve subpoenas	✓	✓
Perform undercover assignments and surveillance operations	✗	✓
Serve search warrants	✗	✓
Make arrests	✗	✓
Education and/or Training		
Introductory training course prescribed by the Commission on Peace Officer Standards and Training†	✗	✓
Equivalent to graduation from an accredited college or university with a major in criminal justice, law enforcement, administration of justice, criminology, or a comparable field of study	✓	✓

Sources: California Department of Human Resources, California Department of Consumer Affairs (Consumer Affairs), Penal Code section 832, and interviews with staff members from the Board of Registered Nursing and Consumer Affairs.

* There are different ranges in the classifications of both non-sworn and sworn investigators. The duties and responsibilities listed can vary depending on the range of the classification.

† The Commission on Peace Officer Standards and Training is a legislatively established state commission whose responsibilities include setting training standards for law enforcement in California.

In fact, in the years prior to the change in law—when BRN had been verbally directed by Consumer Affairs to refer all urgent- and high-priority complaints to DOI for investigation—it apparently did not. According to Consumer Affairs’ deputy director of board and bureau relations (deputy director of relations), in July 2016 DOI evaluated its overall workload and identified that the number of complaints BRN referred to DOI for its investigation significantly decreased over the last six fiscal years. Specifically, the deputy director of relations stated that the number of complaints BRN referred to DOI decreased from a high of 846 complaints in fiscal year 2010–11 to a low of 334 complaints in fiscal year 2015–16, representing more than a 60 percent decrease. As a result, DOI conducted an initial review of complaints assigned to BRN’s non-sworn investigators. The deputy director of relations explained that

this review covered 515 open complaints for the period December 2014 through June 2016, and DOI identified that 171 were possibly of urgent or high priority and should have been referred to DOI. As shown in Table 4, based on our review of DOI's listing of the 171 complaints, which included a description of the allegations, we identified that 111 should have been prioritized as urgent and that the remaining 60 should have been categorized as high priority. In all instances, based on the information in the report, BRN was required to refer these complaints to DOI, but chose instead to have its non-sworn investigators investigate them. As an example of the severity of the complaints shown in Table 4, one alleged that the nurse was found to be under the influence of a controlled substance at work after being observed having difficulty with starting intravenous therapy on a patient after multiple attempts. After a drug test was administered, the hospital conducted an investigation and subsequently terminated the nurse. Another complaint alleged that the nurse failed to order the appropriate test on a patient who had complications with her pregnancy and sent the patient home. The patient later returned by ambulance, and doctors had to deliver the baby by cesarean section. The baby died shortly after birth due to complications.

Table 4
Types of Complaints the Board of Registered Nursing Investigated That It Should Have Referred to the Division of Investigation
December 22, 2014, Through June 24, 2016

TYPE OF ALLEGATION	NUMBER OF CASES INVESTIGATED BY THE BOARD OF REGISTERED NURSING
Urgent Priority	
Conviction	1
Drug theft/drug abuse	9
Fraud/theft	3
Incompetence/negligence	47
Patient death	27
Unlicensed practice	4
Sexual misconduct	6
Unprofessional conduct	14
Subtotal	111
High Priority	
Conviction	1
Drug theft/drug abuse	40
Fraud/theft	2
Incompetence/negligence	5
Unprofessional conduct	12
Subtotal	60
Total	171

Source: California State Auditor's analysis of information provided by the California Department of Consumer Affairs' Division of Investigation.

According to the deputy director of relations, DOI reported its preliminary findings to Consumer Affairs' director, who requested that DOI conduct further review of BRN's complaint referral practices for compliance with the complaint guidelines and state law. In August 2016, according to the deputy director of relations, DOI began a review of the nearly 1,600 complaints BRN's non-sworn investigators either opened or closed during July 2014 through September 2016. As of November 2016, the review was ongoing and Consumer Affairs' chief of DOI stated that he anticipated completing the review in December 2016.

Additionally, in our review of 20 complaints that BRN investigated and resolved between January 1, 2013, and June 30, 2016, we found that it failed to refer two complaints to DOI as directed. One complaint alleged that although an unlicensed nurse was instructed not to do so, she had direct contact with a patient and did not use proper infection control measures when treating the patient's blisters. According to the complaint guidelines, a complaint alleging unlicensed practice must be prioritized as urgent, and Consumer Affairs told us that it verbally directed BRN to refer this type of complaint to DOI for its investigation. The other complaint involved a patient death at a hospital where the complaint alleged that the nurse did not communicate the doctor's order for constant monitoring of the patient and did not develop a care plan for the patient's mental status. Consequently, the complaint alleged that the patient went missing and was found deceased in an emergency exit stairwell 18 days later. In addition to involving a patient's death, this complaint was sensitive because it was reported in the media before BRN received the complaint, both of which are factors that place this complaint in the urgent category. When we asked why BRN had failed to adhere to Consumer Affairs' verbal direction, the chief of investigations stated that BRN assigns complaints to DOI that involve patient death related to direct patient care where harm is considered intentional. If the nurse's culpability is not considered intentional or criminal, she explained this complaint could be investigated by BRN. She also explained that in order to be cost-effective, the complaint was assigned to BRN. However, we disagree because the fact that the complaint involved a patient death and was media-sensitive placed it into the urgent category, and BRN should have referred the complaint to DOI for investigation as directed by Consumer Affairs. Further, as we describe later in this section, BRN's mission is to protect and advocate for the health and safety of the public—not to minimize costs.

When we asked BRN's assistant executive officer and chief of investigations about the numerous complaints we identified that BRN chose not to refer to DOI, they explained that the primary reason they did not refer them was that the complaint guidelines

In our review of 20 complaints that BRN investigated and resolved between January 1, 2013, and June 30, 2016, we found that it failed to refer two complaints to DOI as directed—one involving a patient death at a hospital.

Before January 1, 2016, BRN defied Consumer Affairs' direction that it refer complaints categorized as urgent or high priority to DOI, and subsequent to that date it failed to follow the law.

were unclear. These officials stated that until recently, although the complaint guidelines specified the priority a complaint should be assigned, they did not state which entity—BRN or DOI—should investigate the complaints. The assistant executive officer acknowledged that although Consumer Affairs may have verbally communicated to BRN that it should refer complaints it categorized as urgent and high priority to DOI, BRN had understood this direction as being a guideline and not a requirement. According to the chief of investigations, because of this understanding, BRN considered several factors in making the decision as to when to refer a case to DOI. She explained that these factors included consideration of which entity can complete the investigation in a timely manner, allowing for public awareness sooner; the possible cost associated with the investigation compared to the potential outcome; and whether the investigator will encounter any danger, given the nature of the complaint. However, regardless of its rationale, before January 1, 2016, BRN defied Consumer Affairs' direction that it refer complaints categorized as urgent or high priority to DOI, and subsequent to that date it failed to follow the law.

When we asked the director of Consumer Affairs whether he believes Consumer Affairs clearly directed BRN to refer urgent- and high-priority complaints to DOI, he stated definitively that Consumer Affairs clearly communicated this direction to BRN. He described several meetings he attended or knew of between Consumer Affairs and BRN's former executive officer and her deputies during which this direction was clearly provided. In fact, he stated that BRN has been very resistant to complying with Consumer Affairs' direction and the complaint guidelines since the CPEI was implemented several years ago. The director explained that the reason behind the CPEI and the complaint guidelines is to maximize enforcement staff by freeing up non-sworn investigators to conduct more routine, less complex cases, thus leaving the more complex and serious cases for DOI's sworn investigators. The desired effect, he stated, is to reduce processing timelines and improve the quality of the investigations.

Another reason BRN gave for not complying with Consumer Affairs' direction and state law is the hourly cost of conducting investigations. The chief of investigations stated that BRN can reduce its enforcement costs considerably when its non-sworn investigators investigate the complaints because the cost per hour is lower. In the most recent fiscal year for which actual cost information was available for both investigative units, fiscal year 2014–15, DOI's hourly rate to conduct an investigation was \$235, more than twice BRN's hourly rate of \$88. The costs of investigations can be passed on to the nurse if he or she is found to have violated the Nursing Act and, if paid back, are

deposited into a fund, but BRN may not spend the money without appropriation by the Legislature. According to the chief of investigations, cost recovery is usually the first thing that the Attorney General tends to negotiate down during settlements. Because BRN's lower hourly rate makes it less costly for BRN to conduct an investigation, the chief of investigations stated that having BRN's non-sworn investigators conduct investigations means that BRN can use the savings to commit additional resources to training staff or increasing hourly pay in an effort to recruit additional expert witnesses, which BRN does not have the budget for otherwise. BRN's assistant executive officer stated that she and other BRN officials have communicated concerns about DOI's costs to Consumer Affairs in the past; however, she indicated that Consumer Affairs did not take any action to address these concerns. Nevertheless, cost is not a reasonable justification for choosing not to comply with requirements. BRN's mission is to protect and advocate for the health and safety of the public by ensuring the highest quality registered nurses in the State—not to minimize costs. Further, state law specifies that the protection of the public is the highest priority for BRN and whenever the protection of the public is inconsistent with other interests—such as achieving cost savings—the protection of the public shall be paramount.

Due in part to the fact that BRN was not referring cases to DOI as state law requires or as Consumer Affairs directed, DOI issued revised complaint prioritization guidelines in August 2016 to clearly indicate in writing that the health boards must refer urgent and high priority complaints to DOI for investigation. Nevertheless, BRN still has concerns about adhering to this requirement. According to the chief of investigations and the assistant executive officer, the new complaint guidelines would require BRN to refer the vast majority of its complaints to DOI for investigation, which they believe will result in an insufficient workload for BRN's investigators. However, when we asked these officials whether BRN had conducted a review to determine how many complaints it typically processes that would need to be referred to DOI, they responded that they had not conducted such an analysis, but were working with DOI to identify the number.

As we describe earlier on page 28, our analysis of 138 complaints that had been pending assignment to a BRN non-sworn investigator as of July 27, 2016, found more than 50 percent should have been referred to DOI if BRN had adhered to the CPEI guidelines as state law requires. Further, according to the chief of investigations, one reason for its backlog of complaints pending assignment to an investigator was because all of its investigators already had a full caseload of 20 complaints—a number we were able to confirm through supporting documentation BRN supplied—and therefore could not handle any more. BRN's assistant executive officer

DOI issued revised complaint prioritization guidelines in August 2016 to clearly indicate in writing that the health boards must refer urgent and high-priority complaints to DOI for investigation.

When BRN chooses not to follow the complaint guidelines, not only is it breaking the law, but it is risking that the appropriate attention and resources are not being directed toward urgent- and high-priority complaints.

explained that BRN plans to ask Consumer Affairs to revise the complaint guidelines to allow BRN discretion in deciding when to refer complaints to DOI.

However, it is unclear to what extent BRN's investigators' workload would be negatively affected if BRN adhered to the CPEI guidelines and BRN's non-sworn investigators worked on the two less severe priorities of complaints, had more manageable caseloads, and were able to more quickly resolve complaints. When BRN chooses not to follow the complaint guidelines, not only is it breaking the law, but it is risking that the appropriate attention and resources are not being directed toward urgent- and high-priority complaints. As a result, it could be prolonging its complaint processing timelines and, more importantly, placing the public at a greater risk of potential harm.

Incomplete Investigations Contributed to Unnecessary Delays

BRN and DOI did not consistently gather sufficient evidence when conducting some investigations, extending the time it took BRN to resolve some complaints. According to its *Recommended Guidelines for Disciplinary Orders and Conditions of Probation* (discipline guidelines), BRN must consider the totality of the facts that enable BRN's board to determine whether these facts prove that a nurse violated the Nursing Act. When the Attorney General or expert witnesses need additional information before making a decision on a complaint, they can return the case to BRN to request a supplemental investigation. In fact, we found that during their initial investigation, BRN and DOI did not always acquire all the information pertinent to taking action against a nurse's license.

During our testing of 40 investigated complaints, we identified five that BRN investigated and three that DOI investigated in which supplemental investigations were requested because the investigator did not acquire sufficient evidence during the initial investigation. For example, we reviewed a complaint alleging that a nurse administered chemotherapeutic medication to a patient at an excessively fast rate, in which the deputy attorney general assigned to the case requested BRN to conduct a supplemental investigation to obtain the perspective of the main witnesses, which were the patient and his wife. According to the chief of investigations, the non-sworn investigator did not gather the information and conduct the interviews during the initial investigation due to inexperience. She explained that the BRN analyst responsible for referring this case to the Attorney General should have identified this missing information as well before forwarding the complaint to the

Attorney General. Ultimately, the BRN investigator took more than three months to obtain this missing information, which unnecessarily prolonged the amount of time BRN took to resolve this complaint.

Another complaint, investigated by a sworn DOI investigator, alleged that a nurse overmedicated a patient and did not accurately document the medication administered and times it was delivered. The expert witness requested a supplemental investigation to identify the type of medication delivered and the time it was delivered. According to a supervising investigator for DOI, the investigator could have been more thorough when collecting the evidence. By not obtaining evidence critical to pursuing action against a nurse during the initial investigation, BRN's and DOI's investigators are unnecessarily prolonging the complaint resolution time frame. A senior assistant attorney general for the Attorney General's licensing section, which is responsible for prosecuting cases against nurses for BRN, indicated that both BRN non-sworn investigators and DOI's sworn investigators would benefit from training regarding what constitutes sufficient evidence to substantiate that a nurse has violated the Nursing Act.

When we asked BRN to provide the total number of complaints for which supplemental investigations were requested because of insufficient evidence during the period from January 1, 2013, through June 30, 2016, we learned that BRN did not track this information. However, BRN's management created a report containing 21 complaints for which supplemental investigations were requested due to insufficient evidence during the six-month period from January 1, 2016, through June 30, 2016. From this list we selected 10 complaints to review, and we identified similar instances of investigators not gathering sufficient evidence. For example, one complaint alleged that a managing nurse inappropriately denied medical attention to a patient who fell or threw himself off of a third-story balcony at a medical facility. However, the BRN investigator did not interview the nurse who was the subject of the allegation and the additional evidence the investigator gathered was not sufficient enough to directly link the nurse to the incident. Nevertheless, BRN submitted the case to an expert witness to review. After the expert rendered an opinion, available documentation indicates that BRN executive management decided that the nurse's testimony was crucial to processing the complaint and requested a supplemental investigation to obtain this testimony. By not gathering sufficient evidence during the initial investigation and then sending the investigation to an expert witness, BRN spent more time and resources than necessary to process the complaint and reach a resolution.

DOI's list of complaints requiring supplemental investigations raised similar concerns. Specifically, DOI provided us with a list of 56 complaints for which it had to conduct supplemental investigations due to insufficient evidence from January 1, 2013,

By not gathering sufficient evidence during the initial investigation and then sending the investigation to an expert witness, BRN spent more time and resources than necessary to process the complaint and reach a resolution.

through mid-April 2016. One complaint from our original selection of 20 complaints for which DOI performed the initial investigation was mistakenly miscoded in DOI's information system and was thus not included on the list, although it had required a supplemental investigation due to insufficient evidence. Nevertheless, we selected 10 of these complaints for further review to determine the nature of instances in which sworn investigators did not collect sufficient evidence. For example, one complaint investigated by DOI alleged that a nurse placed a patient in wrist and leg restraints without a doctor's orders or the proper consent from the patient or the patient's family. Following the investigation, BRN forwarded the complaint to an expert witness who found that the nurse had violated provisions of the Nursing Act. However, the Attorney General rejected the case, noting that the expert witness report was deficient because the DOI sworn investigator did not obtain the medical facility's policies on using restraints and did not interview all relevant personnel. As a result, DOI had to perform a supplemental investigation to acquire the additional information, thereby extending the complaint resolution timeline.

BRN does not routinely track the number of complaints for which supplemental investigations are requested due to insufficient evidence and the reasons why these supplemental investigations are necessary.

Although BRN receives and coordinates requests for supplemental investigations, it does not routinely track the number of complaints for which supplemental investigations are requested due to insufficient evidence and the reasons why these supplemental investigations are necessary. As a result, BRN is hindered from identifying and addressing common problems in investigators' evidence-gathering practices. Because supplemental investigations increase the time required to resolve a complaint, BRN is missing an opportunity to improve its overall timeliness. Further, BRN's failure to track issues with investigators' evidence-gathering practices limits its ability to work with other entities, such as the Attorney General or expert witnesses, to improve the evidence-gathering process, reduce the need for additional investigation work, and help shorten complaint resolution timelines.

BRN Lacks a Formal Training Program for Its Enforcement Staff, Risking Inconsistent and Inefficient Processing and Resolving of Complaints

Although BRN makes various training-related resources available to its staff and provides training indirectly related to activities that BRN performs, it does not have a comprehensive training program that seeks to identify overall training needs and provide such instruction to its staff. The U.S. Government Accountability Office considers employee training an important part of an agency's commitment to competence, stating that agencies should establish a training program that includes orientation programs for new employees and ongoing training for all employees. Further, having a comprehensive

training program is a sound business practice. However, according to the managers in BRN's enforcement unit, rather than having its staff attend formal training sessions, BRN uses a checklist process to familiarize staff with work tasks and to monitor staff experience. This checklist is used in conjunction with a shadowing process during which new staff members learn their jobs by reviewing complaints in collaboration with existing staff. In contrast, DOI's investigators are sworn peace officers and are required to complete an investigative training course as prescribed by the Commission on Peace Officer Standards and Training. This training covers topics such as criminal law, presentation of evidence, and investigative report writing. Although these courses are available to BRN investigators as well, they are not a requirement. The limited required training resources that BRN offers its enforcement staff are one explanation for some of the inefficiencies and inconsistencies we describe throughout the Audit Results.

Consumer Affairs provides training resources to its boards through its enforcement academy, leadership academy, and other training programs. According to Consumer Affairs, these programs support the development of its employees by providing a well-grounded, standard baseline of knowledge and practices for new and existing employees who perform enforcement functions, such as complaint intake and investigations. However, in general these training resources are not specific to the activities that BRN's staff performs in the field of nursing, and therefore they do not directly address the enforcement activities that BRN staff members specifically perform and the types of complaints they may process and investigate.

Further, BRN does not track when enforcement personnel take the trainings previously described, nor does it track when staff members take training conducted external to Consumer Affairs that are related to enforcement. We asked the management of BRN's complaint intake unit, investigative unit, and discipline unit for a comprehensive list of the trainings that enforcement division staff members have attended, and they were unable to provide such a listing. The managers stated that BRN does not centrally track trainings that staff members have attended. Instead, the managers said that BRN handles training on an as-needed basis to address employee requests or deficiencies it has identified during its general management activities or through the discipline process. For example, the chief of investigations explained that the complaint intake unit has case management meetings every two weeks that also function as trainings. At these meetings, analysts can ask questions, discuss cases, and work through "gray areas" of their cases with management. Although some staff members we interviewed indicated that they did not receive adequate training, BRN managers expressed their belief that staff members have adequate resources available to them to perform their jobs, such as procedure documents, BRN's orientation

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The chief of investigations explained that limited funding and resources for training have led the enforcement unit to limit training that requires course fees or reimbursement of travel expenses.

process, Consumer Affairs' training resources, and select external trainings. This disconnect likely results from BRN's lack of a formal training program that would identify training needs and provide those resources to staff in order for BRN to more effectively achieve its mission of protecting the public.

The chief of investigations explained that limited funding and resources for training have led the enforcement unit to limit training that requires course fees or reimbursement of travel expenses. Because of these limitations, a supervising investigator stated that it is difficult to send BRN investigators who work in Southern California to trainings, as Consumer Affairs provides the majority of its trainings in Sacramento. She provided us with a list of training classes that include a cost, but which she believes would help her investigative staff members, such as classes regarding witness interview techniques, testimony, report writing, and evidence. We found that BRN has approved staff attendance at only two external trainings between January 1, 2013, and June 30, 2016, which some investigators attended in person, while others attended via webcast. The two approved external trainings were developed by the California District Attorneys Association and the Attorney General. One was related to investigating cases involving elder abuse and the other was related to privacy laws and interacting with the California Department of Justice (Justice). Regardless, without detailed tracking of training attendance and a comprehensive training plan to meet the needs of the enforcement staff, BRN risks that some of its staff members may not be fully competent in completing crucial tasks related to their jobs. This lack of training could have contributed to the numerous issues we found in our review of BRN's processing of complaints, as described throughout the Audit Results.

BRN Has Failed to Ensure That All Nurses Have Fingerprint Records on File as Required and May Not Be Notified When a Nurse Is Arrested or Convicted of a Crime

Although state law requires nurses to do so, BRN has not ensured that all nurses are fingerprinted.⁷ As of March 2009, state law requires the submission of fingerprints upon license renewal for licensed nurses who were not previously fingerprinted or who do not have a fingerprint record with BRN. According to BRN's chief of licensing and administrative services (chief of licensing), fingerprint records allow Justice to notify BRN when a nurse is arrested or convicted of a crime. If the reason for conviction or arrest

⁷ According to the assistant bureau chief of the Bureau of Criminal Information and Analysis within Justice, BRN will be notified of a subsequent arrest or disposition as long as the fingerprints are submitted to Justice, regardless of whether the fingerprints are submitted via hard copy or electronically.

is egregious enough, she stated that BRN can seek to discipline the nurse, including potentially suspending the nurse's license. However, she explained that if a nurse does not have fingerprints on file, Justice may not be aware that the individual is a nurse and will not notify BRN of the arrest or conviction of a crime. Further, although state law requires a nurse to self-report his or her conviction for a crime directly to BRN, the chief of licensing stated that some individuals may fail to do so for various reasons, such as not wanting to lose their license. Thus, the most reliable and consistent means of ensuring that BRN is promptly informed of nurses who may be involved in criminal activity is to ensure that all active nurses have fingerprints on file with Justice.

Although Consumer Affairs designed BreEZe with a control to prevent a nurse from renewing his or her license if BreEZe did not contain any fingerprint records on file for that individual, we found that BRN had been circumventing that control from the time it implemented BreEZe in October 2013 until we raised it as a concern in November 2016. During the majority of the audit period we reviewed, BRN has been overriding this control by manually removing the hold and approving the nurse's renewal application. BRN's chief of licensing stated that when BRN began using BreEZe in October 2013, some fingerprint data in one of its legacy systems was not converted into BreEZe until May 2014. Because of this, she explained that when BreEZe would place a hold on license renewal applications for nurses who did not have a fingerprint record in the system, BRN would override the hold after verifying that the legacy system indicated the nurse had submitted fingerprints previously. We question this approach given that the legacy system may have contained inaccurate information regarding the status of a nurse's fingerprints, and instead we would expect BRN to confirm the status of the fingerprints directly with Justice.

Of further concern, we found that BRN continued to override the system, even after the fingerprint data was converted into BreEZe in May 2014. Specifically, Consumer Affairs provided a report showing that, from October 10, 2013, through November 1, 2016, BRN overrode BreEZe more than 60,000 times. The assistant executive officer of BRN explained that if the licensee fails to answer the fingerprint submission question on the license renewal form but provides BRN with proof that fingerprints have been submitted to Justice for which the results of the background check have not yet been received, BRN would override BreEZe and renew the license. As a result, a nurse who has committed an egregious crime could continue practicing until BRN is notified by Justice, potentially placing patients at risk. When BRN approves a license renewal before receiving results from Justice's criminal background check, it runs the risk of failing to achieve its mission of ensuring consumer protection.

The most reliable and consistent means of ensuring that BRN is promptly informed of nurses who may be involved in criminal activity is to ensure that all active nurses have fingerprints on file with Justice.

Consumer Affairs identified approximately 24,000 active licensed nurses who did not have fingerprint records on file with Justice and another 4,700 who did not have fingerprint records in either BreEZe or with Justice.

Nurses are required to renew their licenses with BRN every two years, indicating that BRN could have ensured Justice received all nurses' fingerprint records as of November 2016, since state law requiring fingerprints became effective in 2009. However, we found that this is not the case. According to BRN's chief of licensing, from 2009 through 2015 BRN focused its efforts on ensuring fingerprints were obtained for those nurses who its records indicated did not have any fingerprints on file with Justice. However, it was not until recently that BRN began working with the results of a reconciliation Consumer Affairs conducted between its records and those provided by Justice.

According to the reconciliation Consumer Affairs conducted at the end of October 2016 of fingerprint data in BreEZe and data provided by Justice, Consumer Affairs identified approximately 24,000 active licensed nurses who did not have fingerprint records on file with Justice and another 4,700 active licensed nurses who did not have fingerprint records in either BreEZe or with Justice. These results indicate that BRN would not potentially be notified by Justice of any subsequent arrests or convictions for these approximately 29,000 nurses. The chief of data governance at Consumer Affairs stated that, for the population of approximately 24,000 nurses for which the data in the BreEZe system and Justice's system is out of alignment, while a subset of those licensees may indeed need to be refingerprinted in order to ensure BRN receives subsequent arrest notifications from Justice, some of these nurses may be showing up on the reconciliation due to either timing issues between BRN's and Justice's systems or minor data errors between the systems. He explained that Consumer Affairs and BRN are working on analyzing this population to determine how many nurses actually need to be fingerprinted. Regarding the approximate 4,700 nurses for which fingerprint data does not exist in BreEZe or with Justice, the chief of data governance at Consumer Affairs indicated that these individuals most likely have not been fingerprinted and therefore BRN would not receive subsequent arrest notifications for these individuals from Justice. According to Consumer Affairs' officials, as of November 2016 this reconciliation is still ongoing, and BRN and Consumer Affairs are working with Justice to determine the cause of Justice not having records of these nurses' fingerprints. Consumer Affairs indicated that its goal is to complete this review as soon as possible.

BRN Should Improve Its Collaboration With Other State Agencies and Health Boards to Ensure Effective Enforcement

BRN's relationship and sharing of information with other entities involved in the enforcement of complaints against nurses could be improved. The chief of investigations explained that although

BRN collaborates with other health boards regarding complaints or investigations related to registered nurses, it has no formal agreements outlining the circumstances under which this type of collaboration should occur to ensure that it happens consistently. She explained that BRN interacts primarily with the Medical Board of California, the Board of Vocational Nursing and Psychiatric Technicians, and the Board of Pharmacy, all of which are within Consumer Affairs. She further stated that BRN and the health boards are expected to notify one another if a health care provider with multiple types of licenses, such as a nurse with a chiropractic or pharmacist license, is under investigation by any of these health boards and, if warranted, to share information pertaining to their ongoing investigations. However, the chief of investigations stated that the interactions among the health boards are governed primarily through mutual, informal agreements. As a result, BRN lacks assurance regarding whether other health boards consistently notify it when they receive complaints regarding nurses, or when they undertake an investigation related to a nurse who has multiple licenses.

BRN also collaborates with various state and local agencies regarding its enforcement of the Nursing Act. The chief of investigations indicated that BRN primarily interacts with county courthouses, the California Department of Public Health (Public Health), the California Department of Corrections and Rehabilitation, the California Department of Social Services, the California Department of Health Care Services, and other local and state government law enforcement agencies. She explained that these agencies sometimes forward complaints to BRN. For example, if one of these agencies has concerns with a nurse in the course of its own investigation, it is expected to file a complaint with BRN.

BRN management believes it could improve its relationships with other state agencies through formal agreements. The assistant executive officer stated that BRN and the other agencies and health boards have a mutual understanding of complaint referrals and notifications. She further explained that no major problems have arisen that would have required the creation of formal agreements. Nevertheless, management confirmed that BRN could improve its collaboration with other agencies and health boards by entering into formal agreements with them to ensure that the expectations regarding the sharing of information are solidified and consistently followed. For example, the chief of investigations told us that complaints BRN receives from Public Health sometimes have little information. Additionally, the process for requesting documents from specific field offices of Public Health can vary greatly—some readily share documents and information with a BRN investigator, while others require a subpoena. She concurred that establishing formal agreements that clearly describe the types

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of information each agency is required to share and the information necessary to include in a complaint would help create more effective and efficient complaint processing and investigations.

We believe BRN management should also take steps to improve collaboration among the health boards by way of BreEZe. According to the assistant executive officer, BreEZe currently does not allow for automatic notifications among the various health boards when, for example, a nurse with multiple licenses has a complaint filed against him or her. Rather, she stated that the management of the health boards has a mutual understanding to notify the other health boards of complaints against their licensees. She explained that BRN management was informed in fiscal year 2009–10 by the contractor that developed BreEZe, that the system would be able to notify BRN automatically if nurses who are licensed with other health boards had complaints filed against them or were disciplined by other health boards. However, when BreEZe was implemented, it was not able to perform this function. She explained that after BreEZe was implemented, BRN made Consumer Affairs aware that the automatic notification capability was missing. However, according to Consumer Affairs' chief of data governance, Consumer Affairs has no record of BRN bringing this concern to its attention. He also stated that in May 2016, based in part on a legislative request, Consumer Affairs began running monthly reports tracking the discipline of nurses with multiple licenses. However, these reports do not track complaints, only disciplinary actions. Due to the ad hoc nature of this approach, BRN risks that it will not be notified of potential violations of the Nursing Act by its licensed nurses. Automatic notifications of complaints about nurses with multiple licenses that are filed with other health boards would inform BRN of complaints against nurses in which no disciplinary action is taken. Until BRN seeks changes to BreEZe to require the automatic notification of any complaints received or disciplinary actions taken against nurses by other health boards, nurses who warrant disciplinary action may continue to practice.

Additionally, state law does not require employers of nurses to report complaints or discipline to BRN. For instance, current state law requires the employer of a licensed vocational nurse to report to the Board of Vocational Nursing and Psychiatric Technicians any licensed vocational nurse who resigns, is suspended, or is terminated for cause. The assistant executive officer stated that she does not know why BRN was excluded from this law, but she believes BRN would benefit greatly if employers were required to report to it nurses who violate the Nursing Act.

BRN Does Not Consistently Notify Complainants as State Law Requires

BRN does not always adhere to state law requiring it to promptly notify complainants that it has received their complaint. State law requires BRN to notify complainants of the initial action taken on a complaint, for every case in which the complainant is known, within 10 days of receiving a complaint. Of the 40 complaints we reviewed, 25 met this condition of having known complainants. For 14 of the 25 complaints, BRN did not provide this notification within the required 10-day time frame. In seven of the 14 complaints, BRN took more than 20 days to notify the complainant. For example, a former patient submitted a complaint alleging that one of the nurses who cared for her during a five-day hospital stay overmedicated her and did not properly document the medications and times they were administered. BRN took 28 days to notify this complainant that it had received the complaint after receiving it. Similarly, BRN took 30 days to notify a patient who is also a licensed vocational nurse after she submitted a complaint alleging that during her hospital stay one of the nurses attempted to administer an incorrect dose of medication to her. According to BRN's chief of investigations, BRN failed to notify complainants within the 10-day requirement because it did not have enough staff to manage the number of complaints and also because it lacked management oversight to review the complaint files and verify that the letters were sent on time. When BRN fails to notify complainants within 10 days as the law requires, it is not acting with the urgency state law intended by creating the 10-day deadline.

Additionally, BRN failed to notify some complainants of the final action it took on the complaint. State law requires BRN to notify complainants of the final action taken on a complaint for every case in which the complainant is known. For four of the 25 complaints that we reviewed for which the complainant was known, BRN did not have evidence to demonstrate that it notified the complainant of the final action it took on the complaint. According to BRN's chief of investigations, BRN's failure to comply with the law in two of these instances—neither of which resulted in disciplinary action—was due to oversight on the part of staff members. However, these omissions clearly point to a lack of management supervision, since management is ultimately responsible for ensuring that staff members process complaints effectively and in accordance with applicable laws.

In the other two instances in which BRN did not send notifications to complainants of the final action it took on the complaints, the chief of investigations stated that the reason was because the BRN board imposed discipline in these two instances and BRN posts all disciplinary actions on its website. She said that since the website

In seven of the 14 complaints, BRN took more than 20 days to notify the complainant that it received the complaint.

For a complaint that may remain open for years, the complainant must spend significant time and effort checking BRN's website repeatedly to see if it has taken disciplinary action against the nurse involved in the complaint.

posting informs the public of the final action taken on a complaint, the posting also informs the complainant. However, we disagree. The complainant cannot know when BRN will post the information to its website. Thus, for a complaint that may remain open for years, the complainant must spend significant time and effort checking BRN's website repeatedly to see if it has taken disciplinary action against the nurse involved in the complaint. When BRN fails to consistently notify complainants of its final action as required, not only does it not comply with state law, but it also fails to provide transparency and closure for complainants. One of these two complaints involved an allegation that the nurse administered a fatal dosage of antibiotics to a toddler and BRN imposed a final disciplinary action of license revocation stayed with three years of probation, but never notified the complainant. The other complaint involved the allegation discussed previously in which a nurse attempted to administer an incorrect dose of medication to a patient who is a licensed vocational nurse. BRN imposed a final disciplinary action of public reproof more than four years after receiving the complaint, but never notified the complainant.

State Law That Establishes BRN's Intervention Program Restricts Its Ability to Investigate Certain Complaints

State law requires BRN to close the investigation of certain types of complaints against a nurse if and when the nurse is determined to be eligible for, and chooses to participate in, the voluntary intervention program that we described in the Introduction. The investigation remains closed unless the nurse exits the program early or he or she fails to successfully complete it. This requirement applies to the investigation of complaints primarily alleging substance abuse, and it does not apply to allegations that involve actual or direct harm to the public. Additionally, although it has the authority to do so, BRN's assistant executive officer explained that BRN does not investigate complaints alleging that a nurse is impaired due to mental illness, as long as the allegation does not involve actual or direct harm to the public, and the nurse chooses to enter and successfully complete the intervention program. If the nurse chooses not to participate in the intervention program or fails to successfully complete it, BRN refers the complaint to the appropriate unit for investigation, the results of which could lead to disciplinary action on the nurse's license. As a result of the law's requirement and BRN's practice that it suspend the investigation during the nurse's participation in the intervention program, an investigation may not occur or be completed until several years after BRN receives the complaint, restricting BRN's ability to access evidence and potentially impose discipline when warranted.

BRN's assistant executive officer acknowledges that it is problematic when a nurse fails to successfully complete the intervention program after several years. The assistant executive officer explained that BRN must then attempt to investigate the years-old complaint when it is extremely difficult for investigators to locate witnesses or evidence because hospitals and health care facilities have records retention policies and often destroy records after a certain amount of time. To the extent BRN finds that evidence is no longer available, it will close the complaint without taking action against the nurse's license.

The entity with whom Consumer Affairs contracts with to oversee the intervention program provided information confirming that nurses can spend years working to complete the intervention program. This information illustrated that about 57 percent of nurses who exited the intervention program from January 1, 2013, through June 30, 2016, successfully completed it. According to this information, a successful exit from the program took an average of nearly five years, whereas the information shows that those who did not successfully complete the program left it an average of eight months after they began.

The circumstances described in this section underscore the need for a change in state law to require BRN to investigate all complaints against nurses while they are participating in the intervention program. Timely investigations are critical to ensuring that BRN has access to witnesses or information that may be central to its disciplinary decisions. If state law required BRN to conduct investigations of all complaints against nurses while they participate in the intervention program, it would increase the likelihood that investigators have access to the necessary evidence. Therefore, if a nurse fails to successfully complete the program, BRN would already have collected the necessary evidence to pursue disciplinary action. This approach would also allow BRN to defer any disciplinary decision until it knows whether the nurse successfully completed the program. Essentially, this means that as long as the nurse participates in the program and successfully completes it, BRN would not pursue any disciplinary action related to the original complaint.

BRN Adequately and Consistently Imposed Discipline on Nurses in Accordance With Its Discipline Guidelines for the Complaints We Reviewed

We found that BRN's discipline decisions for selected cases we reviewed were adequate, within its authority, and were made in accordance with BRN's discipline guidelines. As we described

About 57 percent of nurses who exited the intervention program from January 1, 2013, through June 30, 2016, successfully completed it.

We reviewed 20 complaint files, all of which involved similar violations of gross negligence, incompetence, or unprofessional conduct, and found that BRN consistently imposed discipline in accordance with its discipline guidelines.

in the Introduction, BRN is required to take disciplinary action against nurses who it determines have violated the Nursing Act, and the discipline guidelines contain recommended and minimum discipline terms. State law allows BRN's board to deviate from the discipline guidelines if it determines that the facts of the case warrant such deviation.

We reviewed 20 complaint files, all of which involved similar violations of gross negligence, incompetence, or unprofessional conduct, and found that BRN consistently imposed discipline in accordance with its discipline guidelines. Although BRN's board has the authority to revise stipulated settlement agreements, for 13 of the 20 complaints we reviewed, its board agreed to adopt the proposed stipulated settlement agreements in those instances. Stipulated settlement agreements are settlements negotiated between the nurse, BRN, and the Attorney General, and are similar to out-of-court settlements in civil suits. For another two complaints we reviewed, the nurses defaulted, or failed to provide a notice of defense, after an accusation had been served, and BRN's board followed the guidelines' recommended discipline, which called for it to revoke the nurses' licenses. For the remaining five complaints, BRN's board similarly adhered to the discipline guidelines and acted within its authority when it voted to either adopt or reject and revise the respective administrative law judge's proposed decision.

Finally, for five of the 20 complaints discussed in the last paragraph, they not only contained similar violations, but also contained similar allegations. For these cases, we also found BRN's board's disciplinary decisions to have been consistent. Specifically, two of the complaints, which were related to separate incidents, alleged that the nurses failed to appropriately interpret a fetal heart rate during the patients' labor and delivery, resulting in the infants' deaths. In both of these cases, BRN's board imposed the same discipline on these nurses—license revocation stayed with three years of probation. For the remaining three complaints, which were related to separate incidents, the complaints alleged that the nurses failed to appropriately respond to patients' changes in condition and failed to notify the physician about the changes, and the patients later died. For each of these nurses, BRN's board imposed license revocation stayed with three years of probation.

Recommendations

Legislature

To ensure that BRN receives timely and consistent notification of nurses' alleged violations of the Nursing Act, the Legislature should require the employers of registered nurses to report to BRN the suspension, termination, or resignation of any registered nurse due to alleged violations of the Nursing Act.

If BRN does not develop and implement an action plan by March 1, 2017, to prioritize and resolve its deficiencies, as mentioned in the first recommendation to BRN, the Legislature should consider transferring BRN's enforcement responsibilities to Consumer Affairs.

The Legislature should amend state law to require BRN to conduct investigations of complaints alleging substance abuse or mental illness against nurses who choose to enter the intervention program.

BRN

To ensure that it promptly addresses this report's findings, BRN should work with Consumer Affairs to develop an action plan by March 1, 2017, to prioritize and resolve the deficiencies we identified.

To ensure that BRN resolves complaints regarding nurses in a timely manner, it should do the following by March 1, 2017:

- Develop and implement formal policies that specify required time frames for each key stage of the complaint resolution process, including time frames for how quickly complaints should be assigned to the proper investigative unit or expert witness, and how long the investigation process should take. BRN should also work with DOI to establish a reasonable goal for the length of time DOI's investigators take to conduct investigations of complaints referred to it by BRN.
- Establish a formal, routine process for management to monitor each key stage of the complaint resolution process to determine whether the time frames are being met, the reasons for any delays, and any areas in the process that it can improve.
- Establish a plan to eliminate its backlog of complaints awaiting assignment to an investigator.

To increase its pool of expert witnesses, BRN should do the following by June 2017:

- Develop and implement a process to track the effectiveness of the methods it uses to recruit expert witnesses, and then focus its efforts on those methods that prove to be the most successful.
- Modify its renewal application process for nurses' licenses to include a question regarding whether they would be interested in serving as an expert witness, and then develop a process to promptly follow-up with those nurses.
- Take the steps necessary to increase the hourly wage it pays expert witnesses.

To ensure it does not risk compromising private and confidential information related to ongoing investigations of complaints, BRN should immediately ensure that any email correspondence it has with expert witnesses is transmitted securely.

To ensure that it is able to accurately monitor the performance of its complaint resolution process and that it has accurate data to address its staffing needs, BRN should do the following:

- Immediately begin working with Consumer Affairs to implement cost-effective input controls for BreEZe that will require BRN staff members to enter information into a complaint record in a way that is consistent with BRN's business processes, as well as to implement changes that would cause BreEZe to accurately identify the order in which activities occur.
- Once it has implemented these controls and accumulated six months of data, BRN should analyze these data to determine whether its staffing is sufficient to meet its workload.
- Develop and implement training for all BRN complaint processing staff that instructs them on how to accurately enter information in complaint records that are contained in BreEZe, including the date BRN received the complaint, in a manner that is consistent with BRN's business processes.

BRN should immediately comply with state law and adhere to the revised CPEI guidelines that DOI issued in August 2016. Additionally, BRN should establish and maintain a process for communicating with DOI to discuss any questions that arise in assigning a priority to a complaint or referring a complaint to the proper investigative unit.

To ensure that BRN and DOI consistently conduct adequate investigations and obtain sufficient and appropriate evidence to discipline nurses accused of violating the Nursing Act if warranted, BRN in collaboration with Consumer Affairs should do the following:

- Implement a mechanism by March 2017 to track and monitor supplemental investigation requests that result from investigators' failure to obtain required documentation or sufficient evidence and use this information to mitigate the causes of these failures.
- Coordinate with the Attorney General to develop a biennial training program that includes techniques for gathering appropriate evidence and ensure that all investigators, including DOI's investigators, participate in this training.
- Use this training program to develop a procedural guide that specifies proper evidence-gathering techniques, including a description of what constitutes sufficient evidence, for investigators to follow when investigating complaints. They should then distribute this guide to all investigators, including DOI's investigators, by December 2017, and jointly instruct them to adhere to the guide when conducting investigations.

To ensure that its enforcement unit employees appropriately address and process complaints in a consistent and efficient manner, BRN should do the following:

- By March 2017, develop a process to centrally track the internal and external trainings its staff participate in. On a regular basis, managers should review this information to ensure enforcement staff are participating in a timely manner in appropriate trainings that address the enforcement activities they specifically perform and the types of complaints they may investigate.
- Implement a formal training program no later than December 2017. In developing this program, BRN should consult with DOI and the Attorney General to identify training that could benefit its enforcement staff, and also solicit input of its enforcement staff on areas of their job duties where they believe they need additional training.

BRN should immediately stop overriding fingerprint holds in BreZE based solely on the fact that fingerprint data is present in BRN's legacy system and, for those cases where it believes it is necessary to override the system, BRN should receive its executive officer's approval to do so and document both the reason for the override and evidence of the executive officer's approval.

BRN should continue working with Justice and Consumer Affairs and finalize its reconciliation, by March 1, 2017, of Justice's fingerprint data with its data in BreEZe to identify any nurses who are missing fingerprint records. Once this reconciliation is performed, BRN must take the steps necessary to immediately obtain fingerprints from those nurses for which Justice has no fingerprint records.

To ensure that it has prompt access to adequate information that could affect the status of a nurse's license, BRN should do the following by June 2017:

- Establish formal agreements with other agencies and other health boards that have information pertaining to a nurse's misconduct.
- Work with Consumer Affairs and other health boards to determine whether modifying BreEZe to include a capability that would allow it to promptly notify BRN when another health board receives a complaint or takes disciplinary action against a licensed nurse is cost-effective. If it is, add this functionality to BreEZe.

To ensure that it promptly and appropriately sends notifications to complainants as state law requires, BRN should do the following by March 2017:

- Develop desk procedures that describe the actions enforcement staff members should take when processing incoming complaints and when BRN reaches a final disposition on a case.
- Establish formal procedures, such as managers performing routine audits of complaint files, to monitor incoming complaints and final dispositions.

We conducted this audit under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives specified in the Scope and Methodology section of the report. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Respectfully submitted,



ELAINE M. HOWLE, CPA
State Auditor

Date: December 13, 2016

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For questions regarding the contents of this report, please contact Margarita Fernández, Chief of Public Affairs, at 916.445.0255.

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BOARD OF REGISTERED NURSING

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November 15, 2016

Elaine M. Howle, State Auditor*
California State Auditor's Office
621 Capitol Mall, Suite 1200
Sacramento, CA 95814

Dear Ms. Howle,

Thank you for the opportunity to respond to the draft audit report, "Board of Registered Nursing – Significant Delays and Inadequate Oversight of the Complaint Resolution Process Have Allowed Some Nurses Who May Pose a Risk to Patient Safety to Continue Practicing" number 2016-046, December 2016.

The Board of Registered Nursing's (BRN) mission is to protect and advocate for the health and safety of the public by ensuring the highest quality registered nurses work in the state of California. We have experienced many challenges over the past eight years, but our commitment to continuous improvement and public protection is even greater. We endured events that revealed areas where we could do better in terms of protecting the public. The BRN has taken many steps to improve our processes but are always willing to receive additional feedback to assist us in this endeavor.

We appreciate that the findings of your report encourage the BRN to continue developing and refining our enforcement processes with an eye toward making additional improvements wherever possible. We aspire to ensure that all allegations against licensees and applicants that could endanger the public are investigated promptly, diligently, and in a manner that expeditiously protects the public.

Response to Recommendations

1. To ensure that BRN resolves complaints regarding nurses in a timely manner, it should to the following by March 1, 2017:
 - Develop and implement formal policies that specify required time frames for each key stage of the complaint resolution process, including time frames for how quickly complaints should be assigned to the proper investigative unit or expert witness, and how long the investigation process should take. BRN should also work with DOI to establish a reasonable goal for the length of time DOI's investigators take to conduct investigations of complaints referred to it by BRN.

BRN will continue to formalize and refine its current policies and required time frames for each key stage of the complaint resolution process. The BRN will work with the Division of Investigation (DOI) to establish a reasonable goal for the length of time for DOI's investigators to conduct investigations.

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2. Establish a formal, routing process for management to monitor each key stage of the complaint resolution process to determine whether the time frames are being met, the reasons for any delays, and any areas in the process that it can improve.

BRN will formalize its current processes for management to monitor each key stage of the complaint resolution process. BRN is currently utilizing Quality Business Integrity Reporting Tool (QBIRT) to allow managers to monitor and audit cases through the complaint resolution process. QBIRT is an IBM Cognos report product that the Department of Consumer Affairs (DCA) has purchased and provided for boards and bureaus to create data reports and queries from BreEze data. Reports will be run weekly and or monthly dependent on the milestone being measured. BRN looks forward to working with DCA BreEze staff to establish alerts to identify reasons for delays.

* California State Auditor's comments appear on page 67.

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3. Establish a plan to eliminate its backlog of complaints awaiting assignment to an investigator.

② *As of November 15, 2016, the BRN does not have a backlog of complaints awaiting assignment to an investigator. However, the BRN finds it very important to establish a formal plan to ensure complaints awaiting assignment to an investigator are assigned based on the formal goals established in recommendation 1 above.*

4. To increase its pool of expert witnesses, BRN should do the following by June 2017:

- Develop and implement a process to track the effectiveness of the methods it uses to recruit expert witnesses, and it should then focus its efforts on those methods that prove to be the most successful.

The BRN will work with other boards, bureaus, and DCA to develop and implement a method to track the effectiveness of expert witness recruitment.

5. Modify its renewal application process for nurses' licenses to include a question regarding whether they would be interested in serving as an expert witness, and it should then develop a process to promptly follow up with these nurses.

① *The BRN will continue to work with DCA BreEZe staff to modify the license renewal process to include a question, to identify, track and respond to those individuals interested in becoming an expert witness.*

6. Take the steps necessary to increase the hourly wage it pays expert witnesses.

The BRN will evaluate its operating budget to take the necessary steps to increase the expert witness wage. The BRN will work with other boards and bureaus to establish best practices.

7. To ensure it does not risk compromising private and confidential information related to ongoing investigations of complaints, BRN should immediately ensure that any email correspondence it has with expert witnesses is transmitted securely.

The BRN will work with DCA's Office of Information Systems to develop a robust process to ensure the confidentiality of ongoing investigation of complaints is maintained in a secure manner. The BRN will work with other boards and bureaus to establish best practices.

8. To ensure that it is able to accurately monitor the performance of its complaint resolution process and that it has accurate data to address its staffing needs, BRN should do the following:

- Immediately begin working with Consumer Affairs to implement cost-effective input controls for BreEZe that will require BRN staff members to enter information into a complaint record in a way that is consistent with BRN's business processes, as well as to implement changes that would cause BreEZe to accurately identify the order in which activities occur.
- Once it has implemented these controls and accumulated six months of data, BRN should analyze these data to determine whether its staffing is sufficient to meet its workload.
- Develop and implement training for all BRN complaint processing staff that instructs them on how to accurately enter information, including the date BRN received the complaint, in complaint records into BreEZe in a manner that is consistent with BRN's business processes.

BRN subject matter experts regularly attend monthly Enforcement Users Group meetings to prioritize changes made in BreEZe in regards to enforcement issues. The BRN will continue to work with DCA BreEZe staff to see if it can implement cost effective input controls and other enhancements consistent with BRN business processes. The BRN will analyze data after six months, evaluate business processes and staff workloads, develop and implement training for staff employed in the complaint processing unit. If necessary, BRN will submit a request for additional resources.

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9. BRN should immediately comply with state law and adhere to the revised CPEI guidelines that DOI issued in August 2016. Additionally, BRN should establish and maintain a process for communicating with DOI to discuss any questions that arise in assigning a priority to a complaint or referring a complaint to the proper investigative unit.

As of November 2016, the BRN began utilizing the revised Consumer Protection Enforcement Initiative (CPEI) guidelines which is now known as "Case Referral Guidelines for Investigation" revised by DOI in August 2016. The BRN will seek a DCA legal opinion whether regulations are required to utilize the "Complaint Prioritization Guidelines now known as Case Referral Guidelines for Investigations" without discretion to differ from the guidelines (based on certain types of cases, timelines, or complexity of the case) as outlined in Business and Professions Code Section 328. BRN will formalize and maintain the processes in place for communicating with DOI.

10. To ensure that BRN and DOI consistently conduct adequate investigations and obtain sufficient and appropriate evidence to discipline nurses accused of violating the Nursing Act, BRN in collaboration with Consumer Affairs should do the following:
 - Implement a mechanism by March 2017 to track and monitor supplemental investigation requests that result from investigators' failure to obtain required documentation or sufficient evidence and use this information to mitigate the causes of these failures.

The BRN will work with DCA and DOI to obtain additional reporting enhancements in the Case Activity Tracking System (CATS) and Enforcement Activity Reporting System (EARS) in order to track and monitor supplemental investigation requests to mitigate the causes.

11. Coordinate with the Attorney General to develop a biennial training program that includes techniques for gathering appropriate evidence and ensure that all investigators, including DOI's investigators, participate in this training.
 - Use this training program to develop a procedural guide that specifies proper evidence-gathering techniques, including a description of what constitutes sufficient evidence, for investigators to follow when investigating complaints. They should then distribute this guide to all investigators, including DOI's investigators, by December 2017, and jointly distribute them to adhere to the guide when conducting investigations.

The BRN will work with the Attorney General (AG) to develop a formal biennial training program with techniques to gather appropriate evidence. The training will include procedure guidelines specific to proper evidence-gathering techniques, a description of what constitutes sufficient evidence for investigators to follow when investigating complaints. The guide will be distributed to all investigators including DOI with instructions to adhere to the guide when conducting investigations.

12. To ensure that its enforcement unit employees appropriately address and process complaints in a consistent and efficient manner, BRN should do the following:
 - Develop a process to centrally track the internal and external trainings its staff participate in by March 2017. On a regular basis, managers should review this information to ensure enforcement staff are participating in appropriate trainings in a timely manner that address the enforcement activities they specifically perform and the types of complaints they may investigate.
 - Implement a formal training program no later than December 2017. In developing this program, BRN should consult with DOI and the Attorney General to identify training that could benefit its enforcement staff, and also solicit input of its enforcement staff on areas of their job duties where they believe they need additional training.

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The BRN will formalize the tracking process of enforcement staff trainings in order for management to regularly evaluate and ensure appropriate training is provided to staff in the various units. In addition, the BRN will consult with the AG, DCA SOLID, and DOI to develop a formal training program for enforcement staff. An annual survey will be conducted to solicit enforcement staff input related to job duties and satisfaction. The results will be analyzed regarding their training needs and ongoing assessments.

13. BRN should immediately stop overriding fingerprint holds in BreEZe based solely on the fact that fingerprint data is present in BRN's legacy system and, for those cases where it believes it is necessary to override the system, receive BRN's executive officer's approval to do so and document both the reason for the override and evidence of the executive officer's approval.

The BRN will establish a formal procedure for any type of fingerprint override for the executive officer's approval and reason why. In order to strengthen the fingerprint requirement necessary to renew an active license, the BRN will seek a regulatory change to California Code of Regulations Section 1419(b) to require "clear fingerprint results" which tells the BRN whether or not a licensee has sustained a conviction instead of "proof of submission of fingerprints" which is a copy of the completed LiveScan form submitted to the Department of Justice (DOJ) which does not tell the BRN whether or not any conviction has occurred.

14. BRN should continue working with Justice and Consumer Affairs and finalize its reconciliation, by March 1, 2017, of Justice's fingerprint data with its data in BreEZe, to identify any nurses who are missing digital fingerprints. Once this reconciliation is performed, BRN must take the steps necessary to immediately obtain fingerprints from those nurses for which Justice has no record of receiving them.

The BRN will continue to work with DCA and DOJ to complete reconciliation of fingerprints for the entire registered nurse population. The BRN is taking immediate action to obtain fingerprints for those RNs who do not have digital fingerprints on file with BRN and or DOJ.

15. To ensure that it has prompt access to adequate information that could affect the status of a nurse's license, BRN should do the following by June 2017:
 - Establish formal agreements with other agencies and health boards that have information pertaining to a nurse's misconduct.

The BRN will actively seek to establish formal agreements with other community agencies and healing arts boards regarding a nurse's misconduct.

16. Work with Consumer Affairs and the other health boards to determine whether modifying BreEZe to include a capability that would allow it to promptly notify BRN when another board receives a complaint or takes disciplinary action against a licensed nurse is cost-effective. If it is, add this functionality to BreEZe.

The BRN will work with DCA and other healing arts boards to determine whether it would be cost effective to modify BreEZe to include the capability to promptly notify BRN when another board or bureau receives a complaint or takes disciplinary action against a licensee.

17. To ensure that it promptly and appropriately sends notification to complainants as state law requires, BRN should do the following by March 2017:
 - Establish formal procedures, such as performing routine audits of complaint files, for managers to monitor incoming complaints and final dispositions.
 - Develop desk procedures that describe the actions enforcement staff members should take when processing incoming complaints and when BRN reaches a final disposition on a case.

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The BRN will formalize the desk procedures for processing incoming complaints. In addition, BRN will formalize the policies and procedures for managers to perform routine audits of complaint files to ensure complaint acknowledgement letters and final disposition notifications have been sent to complainants.

We appreciate your feedback and will continue to collaborate with the Department of Consumer Affairs and all other identified entities to address these issues. We look forward to continuing our efforts to improve our enforcement processes to better meet our mission to protect the public. Thank you.

Please contact the BRN's Administrative Office at (916) 574-7600 if you have any questions.

Sincerely,



Michael Deangelo Jackson, MSN, RN, CEN, MICN
President
Board of Registered Nursing

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Comments

CALIFORNIA STATE AUDITOR'S COMMENTS ON THE RESPONSE FROM THE BOARD OF REGISTERED NURSING

To provide clarity and perspective, we are commenting on the Board of Registered Nursing's (BRN) response to our audit. The numbers below correspond to the numbers we have placed in the margin of BRN's response.

In two places in its response, BRN indicates that it will continue to undertake certain efforts to implement our recommendations. Although it did not demonstrate these efforts during the course of our audit work, we look forward to BRN's 60-day response to show what steps it has taken to implement our recommendations.

Although BRN asserts that it has eliminated the backlog of complaints awaiting assignment to an investigator as of November 15, 2016, this was after we completed our fieldwork and thus we did not verify the accuracy of this claim. We look forward to its 60-day response to demonstrate that it has indeed eliminated this backlog, as well as to explain its plan for preventing this backlog from occurring in the future.

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