



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY  
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December 22, 2017

Hon. Thomas P. DiNapoli  
New York State Comptroller  
110 State Street, 15<sup>th</sup> Floor  
Albany, NY 12236

RE: Response to Final Report SED Oversight of Nurse Licensing (2016 S-83).

Dear Comptroller DiNapoli:

The following is the New York State Education Department's (Department) response to the final audit report, SED Oversight of Nurse Licensing (2016 S-83).

**Recommendation 1:** Ensure management more closely tracks investigations, particularly those classified as Priority I, to help ensure they meet established time frames for completion.

The Department agrees that the monitoring and tracking of our most serious disciplinary cases is of high importance. Accordingly, while the office has routinely tracked and monitored aging cases, following the discussions with State Comptroller auditors and staff, SED/OPD management initiated a comprehensive review of all current Priority I cases. Supervisors and staff Investigators evaluated the oldest cases first and sought to identify obstacles to case resolution. Additionally, Investigators and supervisors reviewed the case intake process to determine the seriousness of the nurse misconduct alleged to establish time frames, i.e., 30, 60, 90 days, etc., for individual case review to ensure compliance with established time frames for case completion.

As noted in our initial response, the priority system was developed over twenty-five years ago for the purpose of charting the cycle times for events that occurred within the two distinct divisions (investigations and prosecutions). Currently, the clear-cut distinction between prosecution and investigation is diminished because we understand that it is often more effective to involve prosecution staff in cases before the case is officially transferred from the investigative division. This happens quite often, and especially in cases that are thought to present public safety concerns. As a result, a case may be open in the investigations unit beyond the preferred time frame, but a prosecutor is already involved, and a resolution is nearly at hand. Naturally, this impacts

the time-frames that cases may remain in investigations, but leads to better, timelier, and more effective results overall.

Further, while the Priority I cases include our most serious practice related cases, they now also include other cases, such as sensitive cases and cases of significant public notoriety.

Priority I cases also include every case in which there has been a patient death, which often involves professional conduct that is unrelated to the death. Additionally, any case over 360 days old automatically becomes a Priority I case. These are typically the most difficult cases to resolve because of a variety of obstacles including: lack of availability of records; absence of a respondent; or the fact that there is an ongoing criminal investigation with which we cannot interfere. While the Department is currently considering possible changes to our case categorization system, no final determination has been made and the current, very inclusive, system remains in place.

It is important to note that many of our cases are becoming increasingly difficult to investigate as facilities are unwilling to share documentation with our agency. It is unfortunate that our ability to gain records is not the same as that of our sister agency, DOH Office of Professional Medical Conduct (OPMC), and hospitals increasingly refuse to relinquish records. We have sought legislative relief that would give the Department the same authority as OPMC; however, no statutory change has been approved at this time.

Finally, it must be noted that the Department was unable to share actual investigative files requested by the Office of State Comptroller for purposes of this audit, due to the strict requirements of Education Law Section 6510(8). However, we were able to provide some overall information related to the cases that were under investigation, but were not case specific. These included cases where the professional was in jail and cases where the professional had left the state and was not able to be located.

**Recommendation 2:** Reevaluate existing resources and procedures to identify opportunities for streamlining investigations.

Initially, it is important to note that the Department relies upon budgetary approval from the Division of the Budget as well as hiring procedures that are overseen by the Department of Civil Service. As a result, the Office of Professional Discipline has not had the staffing levels that it has hoped for in recent years. However, to enable us to more timely address complaints of misconduct, including out-of-state nurse discipline, we have developed a proposal to enhance investigations and prosecutions staffing throughout the state. The proposal involves filling more than a dozen new permanent staff positions as well as hiring a number of short-term Project Attorneys to address the backlog of out-of-state discipline referrals. We are reviewing caseload statistics and complaint volume per office to determine where the additional resources would be best utilized, and anticipate presenting a finalized plan to the Division of Budget for approval very shortly.

Additionally, discussions will take place with personnel in the Department's Office of Human Resource Management about recruitment of investigators under the specific title

Nurse Investigator or the equivalent. The current civil service titles available have made it very difficult to recruit investigators that have a background in the licensed professions. However, we understand the value that licensed professional investigators bring to the Department and are seeking to find a way to replace them.

We have also recently lost a number of experienced investigators and supervisors to retirements, and are working to replace them as quickly as possible and provide the training needed to support their efforts. Management continually reviews the Standard Operating Procedures, which are available to all investigators, and staff and supervisors are encouraged to work through their chain of command to consider and suggest process improvements that can further streamline investigations while still ensuring the integrity of the process.

**Recommendation 3:** Take steps to strengthen controls over moral character requirements. Research other states' nurse licensing and monitoring procedures to determine best practices for enhanced oversight.

It is important to note that the most effective way to evaluate an applicant's background is through an appropriate background check that involves the use of fingerprinting and the associated review with the Division of Criminal Justice Services (DCJS) that occurs in teacher certification as well as in numerous professions in other states. However, this requirement would require a change in law. The Department has supported legislation that would make a variety of critical improvements in our disciplinary system, including adding moral character requirements in those professions that lack them, requiring more timely reporting by licensees convicted of crimes, and allowing the department to immediately suspend a license if there is a threat of imminent public harm, but those efforts have not been successful to this point. We will continue to work with the Legislature to resolve outstanding concerns and support passage of a law that will enable us to timelier and effectively address moral character concerns.

However, the Department already uses a variety of resources to track any information relating to moral character that is available. We receive information from national practitioner databases such as the NURSYS system and utilize that information in evaluating our current applicants. We have taken preliminary steps to research other states' nurse licensing and monitoring procedures to determine best practices for enhanced oversight, but our ability to do so is severely limited by a lack of adequate staffing throughout the program area.

The Department's staffing levels in the Office of the Professions (OP) have been substantially reduced over the past decade (down from over 370 to our current level of approximately 300). This staffing decrease accompanies a substantial increase in both the number of licensees/applicants as well as the number of licensed professions that we oversee. Additionally, areas of oversight such as professional corporations PLLCs, LLPs and pharmacy establishments have grown and become increasingly complex.

In 1990, OP had 397 filled positions and oversaw 30 professions and approximately 575,000 registered licensees. In 2000, OP had 351 filled positions and oversaw 37 professions and 645,883 registered licensees. By contrast, OP currently has only 301 filled positions and oversees 54 professions and 929,042 registered licensees. Additionally, various changes to professional scopes of practice, including additional privileges and certifications, as well as expanded enforcement responsibilities, are adopted by the legislature nearly every year. For example, in 1990, only two professions had continuing education requirements overseen by the Department. Today 26 professions have such a requirement.

Finally, organizing and retrieving data has become increasingly more important and more difficult at the same time due to the Department's reliance upon a COBOL based computer system that was developed in the 1970's. Efforts to replace this system have been unsuccessful, even though adequate fiscal resources exist. In recognition of OP's growing responsibilities, many professional associations supported a registration fee increase which was adopted by the legislature in 2009 to give us the resources needed to better serve our customers. Unfortunately, the annual approved spending appropriation for the Office of the Professions has not kept up with the increase in revenue. This has resulted in a growing carry-in balance which we are unable to expend. We have earmarked most of this balance for a much-needed update to our electronic licensing system, but we have not gotten the necessary spending approvals to date that would enable us to move forward with that project.

The Department remains committed to upgrading this computer system and has high expectations for the value of that upgrade. As we continue to pursue this solution, the office is also initiating shorter-term improvements such as scanning case files for electronic storage and retrieval, as well as exploring options for an electronic case management tracking system.

Yours truly,

A handwritten signature in black ink that reads "Sharon Cates-Williams". The script is cursive and fluid.

**Deputy Commissioner**

Sharon Cates-Williams  
Deputy Commissioner

cc: Doug Lentivech  
Sarah Benson  
Thalia Melendez