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STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

October 15, 2019

Ms. Elizabeth Berlin  
Acting Commissioner  
State Education Department  
State Education Building  
89 Washington Avenue  
Albany, NY 12234

Re: Oversight of Nurse Licensing  
Report 2019-F-26

Dear Ms. Berlin:

According to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the State Education Department to implement the recommendations contained in our audit report, *Oversight of Nurse Licensing* (Report [2016-S-83](#)), issued September 29, 2017.

**Background, Scope, and Objective**

The State Education Department (Department) oversees the licensure and practice of the professions, as outlined in Title VIII of the New York State Education Law (Education Law). Its regulatory responsibilities encompass 58 professions, including nursing. As of July 1, 2019, about 414,400 nursing professionals had active New York State licenses in the titles of licensed practical nurse, registered professional nurse, clinical nurse specialist, and nurse practitioner. Individuals may hold more than one license.

To qualify for a nursing license, applicants must meet certain standards, including education, examination, and moral character requirements (such as no involvement in certain crimes or offenses), as established under the Education Law. The Department is responsible for ensuring that applicants seeking a license meet these State standards.

The Department also is responsible for investigating complaints and prosecuting professional misconduct (e.g., gross negligence, physical or sexual abuse, practicing under the influence of drugs or alcohol, conviction of a crime). The Department has established a risk-based system for prioritizing investigations as well as time frame goals and benchmarks for completing them.

In 2018, the Department received about 7,000 complaints against licensed professionals, including nurses. The final disposition of all disciplinary matters can include the revocation, annulment, or suspension of licenses.

The objectives of our initial audit report were to determine if the Department: independently verifies information submitted by nursing license applicants; monitors nurses once they are licensed utilizing available criminal and misconduct data; and investigates complaints against nurses in accordance with its policies and procedures in a timely manner. The audit covered the period April 1, 2014 to April 18, 2017.

Our initial audit found the Department was challenged to ensure investigations, particularly Priority 1 complaints (complaints that pose a substantial danger to public health and safety), were completed timely. During the original audit, the Department denied us access to its investigation files, citing confidentiality provisions in Section 6510(8) of the Education Law. As a result, we were unable to draw conclusions about factors contributing to the noncompliance; nor were we able to assess the Department's compliance with any of its other investigation procedures and benchmarks. We also found the Department did not take proactive steps to check applicants' backgrounds in relation to the moral character requirement or actively monitor nurses to identify incidents of professional misconduct or criminal convictions. Finally, during the original audit, Department officials stated resources have not kept pace with increased expectations. They stated an out-of-date computer system and reduced staffing have led to investigation backlogs and difficulties using available data to monitor and manage investigations.

The objective of our follow-up was to assess the extent of implementation, as of August 14, 2019, of the three recommendations included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

Department officials have made some progress in addressing the issues identified in our initial audit. Of the initial report's three recommendations, all three were partially implemented.

### **Follow-Up Observations**

#### **Recommendation 1**

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

Status – Partially Implemented

Agency Action – The Department has proposed revisions to its procedures for managing investigations including, most notably, extending the time frames for completion. The Department revised the time for completing Priority 1 investigations from six weeks to six months and the time for completing all investigations from 180 days to 270 days. Additionally, the Department proposed new procedures to improve tracking of investigations. The procedures would classify long-running investigations (open

for 365 days) into a new Priority 5 category, which would prompt reviews by the investigator, supervisor, and Deputy Director. Additionally, the Deputy Director will receive a monthly report of Priority 1 investigations and meet monthly with the Director of Investigations to discuss the investigations in the report. As of August 13, 2019, the revised procedures were still in draft form and had not been fully implemented, in part due to staffing vacancies in key positions. Nonetheless, the Department has started to measure the timeliness of its investigations against the extended time frames. According to an internal Department review, approximately 79 percent of Priority 1 investigations opened in 2018 were closed or referred within the newly extended six-month time frame.

Our initial audit noted that the timely completion of investigations helps to ensure the public's safety and affords timely due process to those nurses subsequently exonerated. Department officials view the extended time frames as more realistic due to constraints it faces during investigations, such as staffing and workload. However, we question whether extending the time frames is consistent with ensuring the public's safety and timely due process.

The Department has also supported legislation to help reduce barriers to its investigations. The legislation would grant the Department access to patient or client records for the purpose of investigating and prosecuting professional licensing and misconduct issues. As of August 13, 2019, the bill had not been passed.

## **Recommendation 2**

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

Status – Partially Implemented

Agency Action – The Department has taken steps to streamline investigations by reducing the frequency of certain administrative tasks. For example, the Department has proposed less frequent reporting (monthly instead of weekly) by investigators to their supervisors to better align with computer-generated reports received by supervisors. However, as previously noted, as of August 13, 2019, the revised procedures were still in draft form and had not been fully implemented.

In addition, the Department evaluates its resources on an ongoing basis. According to Department officials, staffing has been reduced over time, while the number of applicants, licensees, and professions they are charged with overseeing has increased. Department officials noted that more staff would help lower case-to-investigator ratios, allowing for better overall case management. As of August 2019, Department officials noted they were waiting for approval from the Division of Budget to fill at least 50 positions, which include multiple investigators and attorneys.

### **Recommendation 3**

*Take steps to strengthen oversight of nurse licensing. This should include:*

- *Taking steps to strengthen controls over moral character requirements.*
- *Researching other states' nurse licensing and monitoring procedures to determine best practices for enhanced oversight.*

Status – Partially Implemented

Agency Action – The Department has supported legislation that would strengthen the oversight of the moral character requirement by requiring licensed professionals to report any conviction of a crime, determination of professional misconduct, or adverse employment action to the Department within 30 days. It would establish a summary suspension process after a determination that the public health, safety, or welfare requires emergency action against a professional license or registered entity. As of August 13, 2019, the bill had not been passed.

The Department has also initiated the process of upgrading/modernizing its computer systems and developing online applications for all 58 professions, including nursing. In addition, the system upgrades will include an enhanced self-service database of frequently asked questions and a customer ticketing system to streamline the routing of inquiries. The Department expects the upgrades to be completed by July 1, 2023.

Finally, the Department has completed some research to identify application and examination requirements in other states. Department officials stated they will continue to research and benchmark other states' nursing oversight and discipline processes as time and resources permit.

Major contributors to this report were Ed Durocher, CIA; Brian Krawiecki, CIA; Vicki Wilkins, CIA; and Jeffrey Dormond.

We would appreciate your response to this report within 30 days, indicating any actions planned to address the unresolved issues discussed in this report. We thank the management and staff of the Department for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Steve Goss, CIA, CGFM  
Audit Director

cc: Sharon Cates-Williams, Deputy Commissioner