

**VIRGINIA BOARD OF NURSING  
MINUTES  
September 20, 2016**

**TIME AND PLACE:** The meeting of the Board of Nursing was called to order at 9:00 A.M. on July 19, 2016 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

**PRESIDING:** Joyce A. Hahn, PhD, RN, NEA-BC, FNAP; President

**BOARD MEMBERS PRESENT:**

Kelly McDonough, DNP, RN; Vice President  
Jennifer Phelps, LPN, QMHPA; Secretary  
Guia Caliwagan, RN, MAN  
Marie Gerardo, MS, RN, ANP-BC  
Regina Gilliam, LPN  
Louise Hershkowitz, CRNA, MSHA  
Trula Minton, MS, RN  
Mark D. Monson, Citizen Member  
Rebecca Poston, PhD, RN, CPNP-PC  
Dustin Ross, DNP, MBA, RN  
William Traynham, LPN, CSAC

**BOARD MEMBERS ABSENT:**

Joana Garcia, Citizen Member  
Jeanne Holmes, Citizen Member

**STAFF PRESENT:**

Jay P. Douglas, MSM, RN, CSAC, FRE; Executive Director  
Brenda Krohn, RN, MS; Deputy Executive Director  
Jodi P. Power, RN, JD; Deputy Executive Director  
Stephanie Willinger, Deputy Executive Director  
Ann Tiller, Compliance Manager  
Huong Vu, Executive Assistant  
Gloria Bradley, Administrative Assistant  
Linda Kleiner, RN, Discipline Case Manager  
Paula B. Saxby, RN, PhD; Deputy Executive Director

**OTHERS PRESENT:**

Charis Mitchell, Assistant Attorney General, Board Counsel  
Elaine Yeatts, Policy Analyst; Department of Health Professions

**IN THE AUDIENCE:**

Andrew Lamar representing Virginia Nurses Association  
Kassie Schroth representing the Virginia Association of Nurse Anesthetists  
Scott Johnson representing Medical Society of Virginia

**ESTABLISHMENT OF A QUORUM:**

With 12 members present, a quorum was established.

ANNOUNCEMENTS:

Ms. Douglas introduced Faye Lemon, Enforcement Director, who will retire by the end of September 2016. Ms. Lemon thanked the Board for their support. She asked the Board to continue support of the new Enforcement Director and Enforcement Staff.

Dr. Hahn and Ms. Douglas welcomed Dr. Ross as a new RN Board member noting that his term will expire June 2020. Ms. Douglas added that the Board now has a total of 14 members.

Ms. Douglas stated that Ms. Gerardo is a designated as second Nurse Practitioner member on the Board.

Ms. Douglas welcomed Huong Vu as the Executive Assistant for the Board. She thanked Gloria Bradley for her work in the interim. She added that Ms. Bradley will continue with the Board in different capacity.

UPCOMING MEETINGS

The Virginia Nurses Association Education Day is scheduled for September 23-24, 2016 and Dr. Hahn will attend. Ms. Douglas noted that Dr. Hahn will receive the Nancy Vance Award at the Virginia Nurse Foundation Gala which is scheduled for September 24, 2016.

The Committee of the Joint Board of Nursing and Medicine formal hearings are scheduled for October 12, 2016. No Business meeting will be held on that day.

DHP 2016 new and returning Board and Advisory Committee Member Training is scheduled for October 24, 2016. Ms. Douglas reminded Board members if they have not to respond to Ms. Bradley if they plan to attend.

Dr. Hahn welcomed Dr. Ross and Ms. Vu and thanked Ms. Bradley.

ORDERING OF AGENDA:

Ms. Douglas noted the new blue agenda in place which incorporated changes in the third mailing. Ms. Krohn indicated:

- Additional Agency Subordinate Recommendation have been added to Panel A and B for Wednesday, September 21, 2016;
- Lopez Formal Hearing has been removed from hearings on Thursday, September 22, 2016; and
- Ms. Gerardo is removed from serving in Panel A on Wednesday and hearings on Thursday.

CONSENT AGENDA:

The Board did not remove any items from the consent agenda. Ms. Hershkowitz made corrections to the July 19<sup>th</sup> minutes. Mr. Monson made corrections to the July 20<sup>th</sup> minutes. Mr. Traynham moved to accept the

consent agenda with modification to July 19<sup>th</sup> and July 20<sup>th</sup> minutes. The motion was seconded and carried unanimously.

Minutes:

July 18, 2016	Panel – Dr. Hahn
July 19, 2016	Quorum – Dr. Hahn
July 20, 2016	Quorum – Dr. Hahn
July 20, 2016	Panel – Dr. Hahn
July 20, 2016	Panel – Dr. McDonough
July 21, 2016	Panel – Dr. McDonough

Reports:

Agency Subordinate Tracking Log  
Finance Report  
Nursing Monthly Tracking Log-Licensure and Disciplinary Statistics  
Health Practitioners Monitoring Program

REPORTS:

**Executive Director Report:**

Ms. Douglas provided information regarding:

- The Call Center has been initiated to assist with calls and to improve responsiveness. Latedra Goodwyn currently manages the Call Center with three temps in place and recruitment for others is in progress. The Board receives about 1,200 – 1,500 calls per day with one full-time receptionist is out on medical leave.
- The Board is working with Communication Department in developing the “how to apply for licensure” video which will be posted on the website.
- BON Staffing Update – currently two managers and two staff are out on medical leave. The request for three additional full-time staff has been approved in the budget proposal. However, these positions cannot be finally filled until approved. The P-14 staff in place has been approved for additional hours. The Probable Cause Reviewer recruitment has been approved also.
- 60% of customer service complaints received reflects applicants that have applied within two weeks. Days to process application are tracked by the Board.
- Ms. Douglas plans to present the licensing process and Nurse Licensure Compact to all HCA HR staff on the East Coast on October 25, 2016.
- CLEAR, the association that various regulatory of Board are tied to, will provide basic investigation techniques and training in November at DHP. All Board staff doing probable review will be participating in the training.
- Dr. Lauren Goodloe, former President of Virginia Nurses Association passed away on July 31, 2016. Dr. Goodloe typically attended the Board meetings and was instrumental in various works of the Board.

**Nurse Licensure Compact (NLC) Administrator Report:**

- Ms. Douglas was unable to attend the meeting last week. She will provide a NLC report at the November Board meeting.

**Taxonomy of Error and Root Cause Analysis Program (TERCAP):**

Ms. Mitchell-Lively is currently out on leave. Ms. Douglas reported the followings:

- TERCAP is the National Project that 25 states participate in. The National Council of State Boards of Nursing (NCSBN) founded TERCAP as a tool to investigate the causes of nursing practice errors.
- Virginia has reached 102 completed data collection tools, with 40 waiting for resolution since 2008.
- In 2014, NCSBN increased the number to 200 cases, at which time statistical assistance for report will be provided.

Ms. Douglas thanked Ms. Mitchell-Lively and Ms. Kleiner for assisting in the project.

**VCUHS/BON Study Update:**

In the absence of Ms. Mitchell-Lively, Ms. Douglas reported the followings:

- To date, 155 data sheets have been completed with 31 of these cases closed, leaving a total of 124.
- Currently on hand are 63 completed forms ready to be submitted to VCU which will complete the study.
- Staff plans to have tentative if not complete research results at the November Board Meeting.

Ms. Douglas thanked Ms. Mitchell-Lively and Ms. Kleiner for assisting in the project.

**NCSBN Annual Meeting:**

Dr. McDonough thanked the Board for the opportunity to attend the NCSBN Delegate Assembly and provided the following information:

- David Benton, the new CEO, was personable, delightful, and knowledgeable;
- The keynote speaker, Dr. Sparrow, talked about architecting the future, “Don’t let the future shape us, we should shape the future.”
- Service and Leadership co-exist and depend on one another.

She deferred the regulatory aspects of prescription drug abuse topic to Ms. Mitchell-Lively when she is back for more information.

Ms. Douglas noted that the CEO of NCSBN comes from regulatory background with international experience. She commented that Katherine Thomas was elected as NCSBN President, who is the Texas Board of Nursing Executive Director and has a great reputation and will lead the organization well.

Ms. Douglas asked the Board to think about risk/harm focus discussion presented at the NCSBN meeting for the November Board retreat.

Ms. Douglas stated that she attended the NLCA meeting on the first day and it appears that in 2017 there will be 30 states to pass the ENLC. The numbers of state depend on individual states legislative bodies. She added that NCSBN will be putting together toolkits to assist in implementation.

**Criminal Background Check Program:**

Ms. Willinger reported that Ms. Turner, Administrative Assistant, resigned in July 2016 and Nancy Melton has filled in as a temp. She noted that as of August 31, 2016 there are two Live-Scan processes, in-state and out-of-state, in place and there are 1200 locations available in all 50 states. This change will greatly assist out-of-state applicants. She added that the CBC team will be working with Ms. Krohn regarding CMT applicants in 2017.

RECESS: The Board recesses at 10:00 AM

RECONVENE: The Board reconvened at 10:10 AM

PUBLIC COMMENT: Andrew Lamar, Lobbyist for Virginia Nurses Association – encouraged Board Members to attend the Virginia Nurses Association conference and Gala.

LEGISLATION/  
REGULATION:

**Status of Regulatory Action:**

Ms. Yeatts reviewed the chart of regulatory actions.

**Consideration of Draft Amendment to 18VAC90-20-190 (Licensure):**

Ms. Yeatts reviewed the amendment to accept an official transcript OR “an attestation” from a nursing education program that an applicant has graduated. Mr. Monson moved to adopt the amendment to 18VAC90-20-190 as fast-track action. The motion was seconded and carried unanimously.

**Consideration of Draft Amendment to 18VAC90-11-50 (PPG List):**

Ms. Yeatts reviewed the information regarding adding language to conform regulations to law changed in 2012. Mr. Monson moved to adopt the amendment to 18VAC90-11-50 as fast-track action. The motion was seconded and carried unanimously.

**Amendment to Guidance Document (GD) # 90-56 (Practice Agreement):**

Ms. Yeatts reviewed the GD #90-56 which was adopted by the Board of Medicine on August 5, 2016. She noted that the Board of Nursing adopted this GD in July and the Board of Medicine modified the document to delete inclusion of “authorization to write DNR order” in the guidance for practice agreement for and LNP in the category of CNM. She added that the GD is presented for Board consideration and action.

Ms. Hershkowitz moved to reject the modification made by the Board of Medicine, to withdraw the current GD, and to refer this GD back to Joint Boards for consideration. The motion was seconded and carried (Ms. Phelps and Mr. Traynham opposed the motion).

Dr. Hahn asked staff to ask the Board of Medicine for some rationale. All agreed.

**Repeal of Guidance Document # 90-28 (Clinical Hours):**

Ms. Yeatts noted that this GD is now obsolete because the regulation now specifies clinical hours that may be awarded for LPNs transitioning to an RN program. Ms. Hershkowitz moved to repeal GD # 90-28. The motion was seconded and carried unanimously.

OTHER MATTERS:

**Board of Nursing Appeals Update:**

Ms. Mitchell, Board Counsel, had no updates. Ms. Douglas noted that letters reference appeal have been revised so that Board Staff refer all contacts regarding appeals directly to Office of Attorney General (OAG).

**NCSBN Board of Directors Update:**

The update was mailed out to Board members.

**NCSBN Learning Extension:**

The information was mailed out to Board members.

**ZIKA Community Education:**

The information was mailed out to Board members.

**CMS Guidance on Resident Privacy and Abuse:**

Ms. Douglas asked Ms. Power to explain further. Ms. Power stated that the Memo from CMS dated August 5, 2016 clearly stated that photographs or recording of resident in nursing home is considered mental abuse.

**Changes to Board Member Lodging Process:**

Ms. Douglas stated that Finance Division is working on arrangement with two local hotels, Holiday Inn Express and Fairfield Inn and Suite, to have lodging billed directly to DHP with special agreed state rate. Board members will no longer prepay for the lodging.

**Board Special Conference Committee (SCC) Changes:**

Dr. Hahn indicated that with the addition of Dr. Ross on the Board, the following changes are made to SCCs:

- SCC-A will be Ms. Holmes and Dr. Ross
- SCC-F will be Dr. McDonough and Ms. Caliwagan

All other SCCs remain the same.

**November Board Retreat Planning:**

Dr. Hahn asked Board members to send any topics to be discussed for the retreat to her and to Ms. Douglas in addition to Dr. Sparrows' webcast of disciplinary agenda. She reminded the Board that the retreat will be held after lunch in November Business meeting.

**Health Practitioners' Monitoring Program Audit:**

Ms. Douglas provided the following information on behalf of Dr. Brown, Agency Director:

- The new and improved Health Practitioners' Monitoring Program brochure, as a result of the audit, can be provided to the public.
- The audit is not a total comprehensive one but a beginning point. The audit focuses more on the operations and the entities that involved.
- The recommendations of the 2015 Citizen Advocacy Center (CAC) Audit of the HPMP are:

**Program Governance**

Incorporate into the Code of Virginia establishing the HPMP a revised mission statement underscoring the public protection role of the program.

Convert the Monitoring Committee from an operational entity to a committee that is advisory only.

Broaden the membership of the Monitoring Committee and consider adding a public member.

Remove the program requirement that is a participant must have a current, active Virginia license.

Ensure that the boards are kept informed by the Contractor of the identity and recovery status of every licensee in the program.

Transfer to the Department and to the individual licensing boards all the decision-making powers and duties now vested in the Committee.

**Program Operations**

Produce and publish an Operations manual detailing who communicates what to whom, when communications are to occur, and how communications are to be accomplished.

Specify in writing the consequences that flow from all types of participant contract violations.

In consultation with the Contractor, develop and publish "Mitigating and Aggravating Circumstances" guidelines to better assure consistency in the handling of similar cases.

Require observed urine tests as a general rule, with exceptions in appropriate cases.

Tighten the standards for selecting, appointing and replacing workplace, peer and employer monitors, and improve their training.

Require the Contractor to allow attorneys or non-attorney personnel representing program participants to communicate directly with Contractor staff.

Track the time lag between a program participant's registration or dismissal date and the imposition of a licensure action by the applicable board.

Give licensing boards more influence over return to work and workplace restriction decisions.

Improve reporting by the Contractor to the Department and to individual licensing boards about program participants' contract compliance and non-compliance.

#### **Program Oversight: Feedback Mechanism**

Revise the statistical reporting system so that it facilitates reviews of key measures of program performance over time. Publish the date on the website in the annual report and ensure that it is transmitted to the Department, Boards and Committee for review and discussion.

Incorporate in the statistical reporting system a selective set of metrics of particular value for oversight, management, and policy-making purposes.

Establish qualitative feedback mechanisms that can facilitate more textured understanding of and explanations for program performance.

Give priority attention to gaining feedback from employers and workplace monitors.

#### **Program Oversight: Outcomes and Evaluations**

Give priority attention to the development and use of outcome measures for determining the success of the program.

Strengthen internal processes for continuous quality improvement.

#### **Program Oversight: "Look Back" Mechanisms**

Establish a working group to determine the extent and type of cost-effective "look back" mechanism to incorporate into the monitoring program.

#### **Public Information**

Use the Virginia Department of Health Professions website to foster better public understanding of the program.

Afterward, the Board's discussion included:

- Feedback from participant should be included in the program evaluation.
- The cost issued, as claimed by many respondents too expensive to participate, is rested with VCU, not DHP.
- Full report is under consideration for sharing.

RECESS: The Board recesses at 11:40 AM

RECONVENE: The Board reconvened at 11:50 AM

EDUCATION:

**Education Special Conference Committee Minutes:**

Dr. Hahn reviewed highlights from September 13, 2016 Education Special Conference Committee meeting and actions. She noted that it was the first meeting since the implementation of the new regulations and thanked Mr. Monson for serving on the Committee with her.

Mr. Traynham moved to accept the revised Guidance Document # 90-21 (Clinical Learning Experience in Nursing Education Programs) as present. The motion was seconded and carried unanimously.

Dr. Saxby stated that “Things to Consider When Choosing a Nursing Education Program” document was drafted in response to Education Committee requested to have available on the website. She noted that it was Ms. Ridout’s work and it is presented for Board consideration and action. The Board suggested revision to include:

- Spell out “Virginia” instead of VA;
- Clarify more information reference accreditation and why it is important to obtain education from accredited programs;
- Add NCLEX pass rate as an indicator of how a school might help students be successful; and
- Add/expand information regarding Board approval and links to disciplinary action by the Board.

The Board asked staff to revise the document and present it back at the November Business meeting.

Ms. Hershkowitz moved to accept the Education Special Conference Committee minutes and recommendations. This motion was seconded and unanimously carried.

**Education Staff Report:**

Dr. Saxby provided the information regarding closure of ITT Technical Institute and the implications on nursing students at Norfolk and Salem locations.

- The Norfolk location will be closed in December 2016 and there are two students graduating.
- The Salem location has 60 students with huge loans and unable to finish the program.
- Other local schools will not accept nursing students from ITT because ITT had a 70% passing standard for their scores compared to 80% passing standard in other local schools.

- ECPI Roanoke is a logical choice for Salem students but ECPI Roanoke does not have full approval from the Board yet so they cannot accept transferred students.
- The State Council of Higher Education for Virginia (SCHEV) has set up a loan forgiveness, but students have to start over at other programs.

Dr. Saxby asked for guidance how to address this matter. Ms. Mitchell said that there is no option for variance of the current regulations. Ms. Douglas suggested the possibility of Executive Order could be explored with additional discussion with Dr. Brown, Secretary Hazel and Secretary of Education. All agreed.

Dr. Saxby said that the NCSBN Education Trend Report indicates that all Virginia Nursing program issues are in line with the national:

- Faculty shortage
- Low NCLEX pass rate
- Distance learning concern
- Use of stimulation
- Meet accreditation but not meeting the Board standards

**Mary Marshall Scholarship:**

Dr. Saxby reviewed the program funds for the Board and noted that the Board has a cap of \$65,000 per year to distribute. There is a mechanism to release additional funds but no indication will be used to release more than \$65,000 cap.

**NNAAP Exam Results:**

Dr. Saxby pointed out continuing trend of low skills pass rate on NNAAP (56% - 74%). She believes it related to increase number critical elements and increase cut score over the years plus the requirement of passing all five skills. She will continue to discuss with NCSBN, who owns the exam, about review process to reach cut scores. All agreed.

RECESS: The Board recessed at 12:35 P.M.

RECONVENTION: The Board reconvened at 1:30 P.M.

RECONSIDERATION OF ORDERS AND CONSIDERATION OF CONSENT ORDERS:

CLOSED MEETING: Ms. Phelps moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 1:32 P.M. for the purpose of deliberation to consider consent orders. Additionally, Ms. Phelps moved that Ms. Douglas, Ms. Krohn, Ms. Power, Ms. Vu, Ms. Bradley and Ms. Mitchell attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Board in its deliberations. The motion was seconded and carried unanimously.

RECONVENTION: The Board reconvened in open session at 1:43 P.M.

Ms. Phelps moved that the Board of Nursing certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was seconded and carried unanimously.

**Vicki Shure, RN 0001-200695**

Dr. McDonough moved to deny the request for reconsideration of the Order entered August 3, 2016. The motion was seconded and carried unanimously.

**You Yu, CMT 0019-010397**

Mr. Monson moved to accept the consent order to indefinitely suspend the certificate issued to You Yu to practice massage therapy for a period of not less than one year from the date of entry of the Order. The motion was seconded and carried unanimously.

**Hawa Sesay, LPN 0002-067357**

Mr. Traynham moved to accept the consent order to reinstate without restriction the license of Hawa Sesay to practice practical nursing. The motion was seconded and carried unanimously.

**Angela Garcia, LPN 0002-077525**

Dr. McDonough moved to accept the consent order to indefinitely suspend the license of Angela Garcia to practice practical nursing and the suspension applies to any multistate privilege. The motion was seconded and carried unanimously.

**John Aberg-Riger, CMT 0019-012376**

Dr. McDonough moved to accept the consent order to indefinitely suspend the certificate issued to John Aberg-Riger to practice massage therapy for not less than two years. The motion was seconded and carried unanimously.

**Eddie Battliner, RN 0001-206825**

Dr. Hahn moved to accept the consent order to reinstate without restriction the license of Eddie Battliner to practice as a professional nurse. The motion was seconded and carried unanimously.

**Heather Barenklau, RN 0001-185772**

Dr. McDonough moved to accept the consent order to accept the voluntary surrender for indefinite suspension of Heather Barenklau's license to practice professional nursing and the suspension applies to any multistate privilege. The motion was seconded and carried unanimously.

Virginia Board of Nursing  
Business Meeting  
September 20, 2016

PRESENTATION OF VIRGINIA STATE SIMUNATION ALLIANCE (VASSA) ANNUAL MEETING:

Dr. Saxby reported that she presented information about the Board at the 11<sup>th</sup> Annual VASSA conference. She added that simulation study was presented and how the Board regulations intersect. She asked the Board to consider revising Guidance Document (GD) # 90-24 (The Use of Simulation in Nursing Education). Dr. Hahn asked for volunteers to be on the Committee to review this GD. Ms. Caliwagan, Mr. Monson, and Mr. Traynham volunteered to be on the Committee.

ADJOURNMENT: As there was no additional business, the meeting was adjourned at 2:10 P.M.

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Joyce Hahn, PhD, RN, NEA-BC, FNAP  
President

Note - Copies of reports referenced can be obtained by contacting the Board of Nursing office.