

**VIRGINIA BOARD OF NURSING
DISCIPLINARY ISSUES COMMITTEE
MINUTES**

March 21, 2012

TIME AND PLACE: The meeting of the Disciplinary Issues Committee was convened at 9:00 a.m. in Board Room 1, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Henrico, Virginia.

MEMBERS PRESENT: John Horn, LPN Member, Chairperson
Florence Jones-Clarke, RN Member
Jeanne Holmes, Citizen Member

STAFF PRESENT: Jodi P. Power, Deputy Executive Director
Gloria Mitchell, Deputy Executive Director
Ann Tiller, Compliance Manager
Tonya James, Compliance Case Manager

CALL TO ORDER: Mr. Horn called the meeting to order at 9:00 a.m.

TOPICS DISCUSSED:

The Board of Nursing's Disciplinary Issues Committee met on March 21, 2012, to consider several issues. The Committee discussed social media issues related to nurses and its other licensees, issuing multiple reprimands to the same licensee, applicants' nonappearance at proceedings, and the consideration of indefinite probation for all licensees placed on probation monitoring. The Committee will be recommending the Board of Nursing adopt a Guidance Document related to the Use of Social Media for nurses and its other regulated occupations, which will be presented to the full Board for its consideration at its next board meeting on May 15, 2012.

DISCUSSION:

1) Social Media Cases

The Committee discussed the increasing number of disciplinary cases received by the Virginia Board of Nursing involving inappropriate use of social media by nurses and nurse aides in the past couple of years. Staff shared that Virginia's experience mirrors that of other states and that staff have participated in multiple national webinars and conference calls related to the topic of social media in the past several months. Additionally staff has recently provided presentations to the public on this topic. Disciplinary actions taken by Virginia and other states have varied from remedial education, to reprimands, suspension and revocation depending on the facts of the case. No other states have issued guidance documents or

developed regulations specific to social media, from those polled during conference calls. Thus far, all states use existing law or regulation as a basis for discipline in social media cases that are related to either breach of patient privacy or confidentiality, unprofessional conduct, unethical conduct, or breach of professional boundaries.

The Committee reviewed and discussed the quality of national work that exists on this topic primarily by the National Council of State Boards of Nursing (NCSBN) and the American Nurses Association (ANA), including: The NCSBN White Paper: A Nurse's Guide to the Use of Social Media; NCSBN Social Media Brochure: "A Nurse's Guide to Use of Social Media"; NCSBN's video regarding Social Media (available on youtube.com and their website); ANA's Principles for Social Networking and the Nurse; ANA's Fact Sheet for Navigating the World of Social Media; ANA's Six Tips for Nurses using Social Media; and Journal of Nursing Regulation article, "Nurse and Social Media: Regulatory Concerns and Guidelines" by Rene Cronquist, JD, RN and Nancy Spector, PhD, RN.

Discussion ensued regarding the often inadvertent violation of patient privacy and confidentiality that occurs by nurses with the advent and pervasiveness of social media in our culture, noting there are generational issues as well. The Committee agreed that the nursing community, including employers and educators need information and guidance on this issue. Recommendations of Committee include:

- a. Issue a Guidance Document regarding the Use of Social Media not only for nurses but also its other regulated occupations. The Committee recommends utilizing the national work already done by merging key information from the NCSBN White Paper and ANA Principles for Social Networking and ANA Tips to Avoid Problems in drafting Virginia's proposed Guidance Document. The Committee also recommends that the electronic version of the Guidance Document posted on the DHP website include a link to the NCSBN resources on this topic. [NOTE: The proposed Guidance Document will be provided at the May 15, 2012 board meeting for consideration for adoption.]
- b. Once adopted, the Committee recommends the Board of Nursing: i) place an announcement on its website about the Social Media Guidance Document; ii) send an electronic mailing to all approved education programs with the attached Guidance Document; and iii) encourage nursing, nurse aide and medication aide programs to order NCSBN brochures regarding this topic to share with their students.
- c. Once adopted, share the Guidance Document with Virginia Department of Health, Office of Licensure and Certification, and the Department of Social Services, which regulate hospitals, nursing homes, home care organizations, hospice, and assisted living facility to promote this information is disseminated to employers as well.
- d. Request from NCSBN copies of their "Use of Social Media" brochure to hand out to: i) students who attend and observe administrative proceedings at DHP offices; ii) students/nurses attending presentations provided by professional Board staff; iii) attendees of quarterly orientation programs for those interested in establishing nursing education programs.
- e. Add viewing the Social Media video to possible terms that could be ordered as part of probation or for remedial education without probation, as a result of a disciplinary case disposition. This would include inquiring with NCSBN about a certificate of completion for viewing it on their website, as done previously with their professional boundaries video which the Board uses similarly in appropriate disciplinary cases.

2) Issuing Multiple Reprimands to the same Licensee

The question of whether the Board of Nursing should be issuing multiple Reprimands to the same individual was raised by the Board and referred to the Discipline Issues Committee in November 2011.

The Committee discussed the various aspects of this matter and concluded that while all support the concept of progressive discipline by the Board, which includes considering prior discipline by the Board when sanctioning subsequent a violation, it did not believe the Board should be so proscriptive as to preclude more than one Reprimand to the same licensee. There are times when applicants are approved and reprimanded for pre-licensure behavior (ie, criminal conduct). Such individuals should not be later prevented from receiving a Reprimand for subsequent practice violations of law and regulation, if the underlying conduct warrants it. For example, there are instances when subsequent violations warrant a Reprimand per existing Board Guidance Document (ie, in the case of practicing on an expired license, patient abandonment, falsifying an application, or noncompliance with a Board Order, along with indefinite suspension). The Committee did not believe the Board should be prohibited from considering a Reprimand for different behavior, if that is the appropriate sanction. Instead, the Committee believes appropriate sanctioning should be at the discretion of the decision-maker on a case-by-case basis consider all the facts, evidence and past sanctioning.

Therefore, the Committee is making NO RECOMMENDATION regarding this issue.

3) Denial of Applicants based upon non-appearance at a proceeding

The question of whether the Board of Nursing should deny applicants for licensure/certification/registration based upon nonappearance at their scheduled proceeding regarding their application was referred to the Discipline Issues Committee in November 2011.

The Committee discussed the various aspects of this matter and concluded that nonappearance is just one factor considered by the Board, and should not be determinative. Decisions regarding approving or denying applicants are made based upon all of the evidence, including sufficiency of the evidence regarding the alleged violation that is grounds for denial. The burden of proof is upon the applicant to demonstrate he/she meets qualifications and is safe to practice. However, the burden of proof is upon the Commonwealth to demonstrate an applicant violates § 54.1-3007 of the Code, which is grounds for denial. Appearance at the proceeding in person and/or providing additional information in writing, in lieu of appearance, assists the Board with assessing credibility and addressing the alleged issues of concern for the Board cited in the Notice to assure safety to practice and of the public. However, any action to deny an applicant should continue to be based upon multiple factors, and never solely due to nonappearance at the proceeding.

Therefore, the Committee is making NO RECOMMENDATION regarding this issue.

4) Consideration of Indefinite Probation in all cases of ordered probation monitoring

The question is whether the Board of Nursing should consider placing all of its licensees ordered onto probation for an indefinite period of time, instead of sometimes for a fixed period of time of nursing employment. This issue was raised by Board counsel during formal hearings in January 2012, after a respondent in a noncompliance case claimed he did not know he was responsible for continuing to submit quarterly reports after the fixed period of employment and probation time passed although he had not been released by the Board from probation. Thus, the matter was referred to the Discipline Issues Committee for discussion and consideration.

The Committee discussed the various aspects of this matter after hearing information from Ms. James, Compliance Case Manager, regarding probation monitoring. Ms. James clarified that she does not automatically generate compliance summary reports after probationers have completed employment for the time period specified in probation orders, whether indefinite or fixed; rather licensees on probation must request release from probation in either instance. After receiving such request, a compliance summary is prepared and reviewed and the Board may grant release from probation and terms based upon satisfactory completion, or schedule a proceeding if there are outstanding violations or noncompliance issues. Following discussion by the Committee, the real issue appears to be ensuring the probationer is clear that probation with its terms and conditions continues until a request for release is initiated by him/her and the Board verifies release from probation in writing.

The Committee concluded it prefers to continue to allow the Board flexibility in ordering probation monitoring on either an indefinite basis or for a fixed period of time, depending on the circumstances of each case. Thus, no recommendation is being made to place all persons monitored on indefinite probation. Instead, the Committee recommends revising Board of Nursing probation related forms to make clear the responsibilities and expectations to the probationer. Recommendations of the Committee are:

- a. If not already done, direct staff to revise both the Initial Contact and Self Report Forms to include an acknowledgment signed by probationer documenting he/she understands he/she remains on probation until he/she requests termination of monitoring from the Board of Nursing and the Board notifies the probationer in writing (by Order) that probation is completed and terminated.
- b. If not already done, direct staff to revise the Self Report Form to add a place where the probationer may request release from probation, as part of a quarterly self report.

NEXT MEETING: The Disciplinary Committee agreed to meet on April 16, 2012, at 8:15a.m.(prior to formal hearings beginning at 9:00 a.m.) in order to discuss topics they were unable to address at this meeting, including volunteer work counting toward probation.

ADJOURNED: The meeting was adjourned at 10:05 a.m.

Jodi P. Power