

**VIRGINIA BOARD OF  
NURSING  
Discipline Committee  
Agenda**

Department of Health Professions,  
9960 Mayland Drive, Suite 300,  
Henrico, Virginia 23233

**Tuesday, November 13, 2018**

**3:00 P.M. – Board of Nursing Officer Meeting – Conference Center Suite 201 – Board Room 2**

Call to Order: Marie Gerardo, MS, RN, ANP-BC; Second Vice President

Other Members: Laura F. Cei, BS, LPN, CCRP

Ann Tucker Gleason, PhD, Citizen Member

- I. **Imposing Monetary Penalties** – discuss case type where monetary penalties may be appropriate sanction
  - **90-3:** Continuing Competency Violations for Nurses
  - **90-12:** Delegation of Authority to Board of Nursing RN Education and Discipline Staff
  - **90-38:** Disposition of Disciplinary Cases against Nurses and Massage Therapist Practicing on Expired Licenses
  - **90-61:** Disposition of Disciplinary Cases against Certified Nurse Aides and Registered Medication Aides Practicing on Expired Certificates of Registrations
  
- II. **Review of Guidance Documents**
  - **90-35:** Non-Compliance with Board Orders
  - **90-39:** Indefinite Suspension Timeframes
  
- III. **Next Meeting**

## **Board of Nursing**

### **Continuing Competency Violations for Nurses**

Should a registered nurse or licensed practical nurse not complete their continuing competency requirements, and it is determined that this is the first time and that the conduct is not willful or intentional, the Board may offer a Confidential Consent Agreement (CCA) that will allow her/him to complete the continuing competency requirements. The CCA may require submission of original documentation of the missing continuing competency requirements to be returned with the signed CCA within 30 days.

Should it be determined that the conduct is willful or intentional, or it is the second or more occurrence for this violation, the Board will proceed with an informal conference or offer a pre-hearing consent order and will consider the nurse's previous violations. Suggested sanctions include a \$100 monetary penalty for each missing requirement and a \$300 monetary penalty for each fraudulent renewal certifying that the licensee met the renewal requirements. In addition, the nurse may be required to complete the missing requirements with documentation of completion submitted to the Board within 60 days of entry of the order.

Nurses may request exemptions or extensions as provided in 18VAC90-19-160 (F) of the Regulations Governing the Practice of Nursing. Should an extension be granted, the nurse must obtain the hours within the time frame allotted by the Board.

## **Delegation of Authority to Board of Nursing RN Education and Discipline Staff**

### **I. The Board of Nursing delegates to professional education staff the authority to:**

- Approve nursing education programs with curriculum changes that relate to decreasing the number of clinical hours across the life cycle as long as the hours meet Board regulation 18VAC90-20-120 E.
- Approve quarterly reports from nursing education programs that meet all regulation requirements.
- Approve nurse aide education programs that meet requirements as determined by a review of a nurse aide education program application, an on-site review and/or a program evaluation report.
- Approve a change of location or additional locations for nurse aide education programs that meet Board of Nursing requirements.

### **II. The Board of Nursing delegates to professional discipline staff the authority to conduct probable cause review, issue Advisory Letters, offer Prehearing Consent Orders (PHCO's) and Confidential Consent Agreements (CCA's), or close a case, in the following circumstances:**

**A. Probable Cause Review** – Professional discipline staff are delegated the authority to determine if there is probable cause to initiate proceedings or action on behalf of the Board of Nursing, including the authority to close a case if staff determines probable cause does not exist, the conduct does not rise to the level of disciplinary action by the Board, or the Board does not have jurisdiction. Additionally, staff may review a case with a Special Conference Committee for advice to determine if the case should be closed, a proceeding initiated, or an alternative disposition offered. Specifically, staff may:

#### **B. Close cases in the following circumstances:**

- Insufficient evidence of a violation of law or regulation, or not rising to the level of disciplinary action by the Board.
- Undetermined for reconsideration should another similar complaint be received.
- Undetermined until the lapsed/suspended/revoked licensee applies to reinstate or late renew.

**C. Advisory Letters** - Professional discipline staff are delegated the authority by the Board to issue an Advisory Letter to the person who was the subject of a complaint pursuant to Va. Code § 54.1-2400.2(F), when it is determined a disciplinary proceeding will not be instituted.

**D. Initial and Reinstatement Applicants:**

For initial and reinstatement applicants, professional staff may offer the following where there is cause for denial of licensure/certification/registration, in lieu of instituting a proceeding:

- PHCO to approve with sanction or terms consistent with that of another state
- PHCO to approve and require HPMP participation and compliance for applicants whose only causes for denial are related to impairment issues.
- PHCO to reinstate and comply with HPMP when a lapsed licensee was under a prior order to participate and comply with HPMP
- PHCO to reinstatement with same terms of probation for a probationer who allowed their license to lapse while under terms
- PHCO to Reprimand and approve, for failing to reveal a criminal conviction on a current or prior application for licensure/certification/registration (except for cases resulting in mandatory suspension). Such a PHCO may be offered at the discretion of staff considering factors such as whether the conviction would have been cause for denial, how recent was the conviction, and the explanation provided for such non-disclosure.
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- PHCO to Reprimand and approve, if applicant has only one misdemeanor conviction involving moral turpitude, that conviction is less than 5 years old, and the applicant has satisfied all court requirements – consistent with Guidance Document # 90-10.

**E. Disciplinary Cases:** For disciplinary cases, professional discipline staff may offer the following, in lieu of instituting a proceeding.

**1. General PHCOs:**

- PHCOs for discipline cases for all occupations regulated by the Board of Nursing for sanctions consistent with the approved Sanction Reference Worksheet Guidelines (see Guidance Document 90-7).

- PHCO to Accept Voluntary Surrender for Indefinite Suspension during any type of investigated case when licensee indicates to the investigator the desire to surrender, or individual mails in license during course of the investigation
  - 1. PHCO for similar sanction consistent with another state board of nursing action
  - 2. PHCO for similar terms/conditions (Probation or HPMP) for cases based upon action taken by another state board of nursing.
- 2. Practice on Expired license/certificate/registration:**
- PHCO for monetary penalty ranging from \$100 – \$500 and possible Reprimand for Nurses practicing on expired license, consistent with Guidance Document # 90-38
  - Advisory Letter or PHCO for monetary penalty ranging from \$50 - \$150 and possible Reprimand for CNAs, CMTs, and/or RMAs practicing on expired certificates or registrations, consistent with Guidance Document # 90-61
- 3. Impairment**
- Either a PHCO for Reprimand or a CCA (in lieu of scheduling an informal conference), depending on the facts of the case, for cases involving a positive urine drug screen on duty for a substance not prescribed to the licensee.
  - Either PHCO to Take No Action contingent upon entry into and/or remaining in compliance with HPMP, or offer CCA with terms (i.e. quarterly reports from treating provider) for cases resulting from mandatory reports or self-reports of admission to hospitals for mental health issues where there are no practice issues. (Additionally, staff are authorized to close such cases undetermined if deemed appropriate.)
  - PHCO to Take No Action contingent upon HPMP compliance in lieu of an IFC for disciplinary cases with Health Practitioner Monitoring Program (HPMP) participation and no prior Board history, no prior stay granted, the licensee is compliant with HPMP contract and no issues other than impairment.
  - PHCO to Take No Action contingent upon continued HPMP compliance for cases with report received from PMP committee wherein stay of disciplinary action was vacated, but the individual was not dismissed from HPMP, and is now fully compliant with contract. (Include in the PHCO's findings of fact that stay was vacated.)
  - PHCO to Accept Voluntary Surrender for Indefinite Suspension for cases involving HPMP participant that was ordered into program, but is now unable to participate due to medical reasons and HPMP committee dismisses or accepts individual's resignation

#### **4. Standard of Care**

- PHCO for Reprimand for a one-time failure to provide acceptable standard of care.
- PHCO for Reprimand for abandonment of patients by licensees in a nursing home or other healthcare facility and where this is the only alleged issue.
- PHCO for Reprimand based upon unprofessional conduct for allegations of verbal/physical abuse with mitigating circumstances.

#### **5. Fraud/Financial Gain Cases**

- PHCO for Monetary Penalty for cases involving fraud or underlying actions/misconduct resulting in financial gain by the licensee/applicant. This may include but is not limited to: falsifying time records to indicate worked when did not; falsifying employment and licensure applications; altering expiration dates on records/certifications (ie CPR cards); falsifying work/school notes, etc. [NOTE: Staff is authorized to add a Reprimand to the Monetary Penalty in the case of egregious, intentional conduct.]
- Monetary Penalty amount imposed shall not exceed \$5,000 for each violation of law or regulation, in accordance with VA Code § 54.1-2401, and shall only be imposed if the individual is not criminally prosecuted for the violation.

#### **F. Compliance**

For cases involving noncompliance with prior board orders, professional discipline staff are authorized to do the following in the circumstances below, in lieu of instituting a proceeding:

- Offer PHCOs consistent with Guidance Document # 90-35 based upon noncompliance with a prior board order.
- Have authority to modify probation orders.
- Close undetermined any noncompliance case where the licensee on probation has allowed the license to lapse (not working). Board of Nursing database would be flagged so staff could offer PHCO with same terms as initial probation orders, once the license is being made current.
- Issue Orders of successful completion of HPMP, when participation was board-ordered.
- Issue Orders of successful completion of probation with terms (effective November 15, 2011, consistent with the way the Board handles successful completion of board-ordered HPMP participation).

[NOTE: *Orders related to HPMP and Probation completion shall be scanned onto the agency website and provide consistency to the public in Board of Nursing documentation in the future.*]

## **G. Confidential Consent Agreements (CCA's):**

Professional disciplinary staff are delegated authority to offer CCA's for those cases that meet the criteria in Va. Code §54.1-2400(14), which includes but is not limited to the following scenarios:

### **1. Impairment and/or HPMP:**

- Pre-employment positive drug screen without evidence it has affected practice
- Possible impairment without evidence that it has affected practice (i.e. coming to work with alcohol on breath & sent home; hospitalized for psychiatric or substance abuse treatment)
- HPMP participant not eligible for a stay, but with minimal practice issues

### **2. Standard of Care:**

- Single medication error with no patient harm.
- Standard of care violation “with little or no injury”
- Standard of care violation that may be in part due to systems issues.
- Single incident of exceeding scope of practice – accepting assignment or agreeing to do a task without adequate training obtained or competency maintained and no patient harm.
- Unintentional/inadvertent Practice Agreement violations for LNP's with Prescriptive Authority.

### **3. Abuse / Neglect / Misappropriation / Boundary violation:**

- Single boundary violation with no patient harm (i.e., getting involved with patient finances) and not resulting in criminal conviction.
- Vague “rough handling” where there is no patient harm and does not rise to the level of abuse
- Inappropriate verbal response that does not rise to the level of verbal abuse (i.e., “shut up”)

### **4. Miscellaneous:**

- CE violations for CMT's, RMA's, LPN's, RN's, and LNP's.
- Technical probation violations (i.e., late reports, etc.) that do not rise to the level of Noncompliance cited in Guidance Document 90-35.
- A single misdemeanor conviction involving moral turpitude but unrelated to practice, with no other issues (ex. worthless check; shoplifting).

## **VIRGINIA BOARD OF NURSING**

### **Disposition of Disciplinary Cases against Nurses and Massage Therapist Practicing on Expired Licenses**

The Board of Nursing delegates to Board discipline staff the authority to offer a prehearing consent order in cases of nurses or massage therapist practicing on expired licenses.

The staff shall use the following when preparing prehearing consent orders:

Practice on an expired license for 30 days or less would result in a \$100 monetary penalty.

Practice on an expired license for 31 – 90 days would result in a \$200 monetary penalty.

Practice on an expired license for 91 – 180 days would results in a \$300 monetary penalty.

Practice on an expired license 6 months – 12 months would results in a \$500 monetary penalty.

Practice on an expired license greater than one year would result in a Reprimand and a \$500 monetary penalty.

In cases where there is suspicion of a willful act, the licensee will be scheduled for an informal conference.

Adopted: May 11, 1999

Revised: November 18, 2003; March 21, 2007; May 15, 2012; January 29, 2013; January 30, 2018



## **VIRGINIA BOARD OF NURSING**

### **Disposition of Disciplinary Cases against Certified Nurse Aides and Registered Medication Aides Practicing on Expired Certificates or Registrations**

The Board of Nursing delegates to Board discipline staff the authority to offer a prehearing consent order in cases of CNAs or RMAs practicing on expired certificates or registrations.

The staff shall use the following when preparing prehearing consent orders:

Practice on an expired certificate or registration for 30 days or less would result in an advisory letter.

Practice on an expired certificate or registration for 31 – 90 days would result in a \$50 monetary penalty.

Practice on an expired certificate or registration for 91 – 180 days would result in a \$100 monetary penalty.

Practice on an expired certificate or registration for 6 months – 12 months would result in a \$150 monetary penalty.

Practice on an expired certificate or registration for greater than one year would result in a Reprimand and a \$150 monetary penalty.

In cases where there is suspicion of a willful act, the certificate holder, or registrant will be scheduled for an informal conference.

Adopted: May 15, 2012

Revised: October 4, 2017; January 30, 2018

## Virginia Board of Nursing

### Noncompliance with Prior Board Orders

A licensee may be placed under terms of continued practice by Order of the Board of Nursing that may include probation with terms, paying a monetary penalty, completing courses, submitting to a mental health and chemical dependency evaluation, and/or entering into and complying with the Health Practitioner's Monitoring Program (HPMP).

When such licensees do not comply with the terms stated in said Order, they are deemed "noncompliant" and may be scheduled for an administrative proceeding to consider further disciplinary action up to and including suspension or revocation of a license.

The Board will typically take the following actions based upon the following types of noncompliance with a prior Board order. Further, the Board authorizes professional discipline staff of the Board to offer prehearing consent orders consistent with the guidance listed below, in lieu of conducting an administrative proceeding for such cases of noncompliance:

<b>Type of Non-compliance</b>	<b>Typical Board action</b>
Failure to pay monetary penalty within specified time in Order (or granted extension)	Reprimand and indefinite suspension until meets the term
Failure to submit verification of completing course(s), watching video, or other remedial terms within specified time in Order (or granted extension)	Reprimand and indefinite suspension until meets the term
Failure to obtain and submit evidence of a mental health/chemical dependency evaluation within time specified in Order (or granted extension)	Reprimand and indefinite suspension until meets the term; then original Order continues (if applicable)
Failure to follow treatment recommendations within 60 days following a mental health/chemical dependency evaluation	Reprimand and indefinite suspension until evidence has done so; then original Order continues (if applicable)
Failure to enter the Virginia HPMP within time specified in Order (or granted extension)	Reprimand and Indefinite suspension which may be stayed if enters HPMP; Note: Board may also consider other justifiable facts for an alternative action (i.e., Reprimand and place on probation with similar monitoring terms)
Noncompliance constituting dismissal from HPMP when a prior Board order required entry into and remaining in compliance with HPMP	Reprimand and indefinite suspension
Noncompliant, but evidence licensee is back in compliance with terms of Order by the time of the proceeding	Reprimand and extend period of probation monitoring equivalent to the period the licensee was noncompliant
Noncompliant licensee on probation, with late	Reprimand and extend length of probation

reports on more than 3 occasions	monitoring for 6 months
One positive urine drug screen test, without appropriate prescription documentation	Reprimand and extend probation additional 6 months and increase frequency of urine drug screening
Two or more positive urine drug screen test, without appropriate prescription documentation	Reprimand and indefinite suspension
Licensee who has not contacted Compliance Case Manager of Board of Nursing at all in response to Order and has demonstrated no evidence of compliance with any terms of Order, within 60 days of entry of said Order	Reprimand and indefinite suspension
Licensee on probation who has contacted Compliance Case Manager of Board of Nursing, but has not complied with any terms of Order for any 6 month (two quarters of reports due) period of monitoring.	Reprimand and indefinite suspension
Second incidence of noncompliance of the same Board Order being adjudicated	Reprimand and indefinite suspension
Licensee has stayed compliant for more than 5 years with terms of a probation order entered prior to December 1, 2011, except that the period of work as a nurse is not met.	Modify existing probation order to continue on indefinite probation, require licensee begin employment no later than one (1) year from entry of the modified order, and require completion of two (2) years of employment within a period of three (3) years from entry date of the modified order. Further, during the two-year period of practice, all other relevant terms and conditions of the previous order are re-imposed.
Subsequent Noncompliance: If all terms of the modified order are not met within the three-year specified time frame	Reprimand and Indefinite Suspension
Failure to comply within five (5) years with all terms of a probation order entered after December 1, 2011. (This does not apply to HPMP orders.)	Reprimand and Indefinite Suspension

Adopted: July 20, 2010

Revised: November 15, 2011; January 29, 2013

## **Virginia Board of Nursing**

### **Indefinite Suspension Timeframes**

- When the Board of Nursing determines it is appropriate to indefinitely suspend a license/certification/registration to practice based upon impairment due to chemical dependency issues, without an option of staying the suspension based upon entry into and compliance with the Health Practitioner Monitoring Program, the Board will routinely consider imposing a "not less than 2 year" minimum timeframe on the suspension, before allowing the licensee to apply for reinstatement. Factors to be considered on whether to impose this minimum timeframe shall include a demonstrated period of sobriety and evidence of chemical dependency treatment.
- Indefinite suspensions due to mental health impairments or practice issues may, but will not routinely, include a minimum timeframe.