

**VIRGINIA BOARD OF NURSING
DISCIPLINE COMMITTEE
MINUTES**

November 13, 2018

TIME AND PLACE: The meeting of the Discipline Committee was convened at 3 p.m. in Training Room 2, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, 2nd Floor, Henrico, Virginia.

MEMBERS PRESENT: Marie Gerardo, MS, RN, ANP-BC, Chairperson
Laura Cei, BS, LPN, CCRP

MEMBERS ABSENT: Ann Tucker Gleason, Ph.D., Citizen Member

STAFF PRESENT: Jodi P. Power, Senior Deputy Executive Director
Robin Hills, Deputy Executive Director for Advanced Practice
Ann Tiller, Compliance Manager
Tonya James, Compliance Case Manager
Beoncia Johnson, Compliance Specialist

CALL TO ORDER: Ms. Gerardo called the meeting to order at 3:00 p.m.

TOPICS DISCUSSED:

The Board of Nursing's Discipline Committee met on November 13, 2018, to:

- discuss case types that may be appropriate for imposing monetary penalties as a sanction;
- consider existing Guidance Documents previously adopted by the Board of Nursing that contemplate the use of monetary penalties; and
- review other Guidance Documents assigned to this Committee by virtue of their content as part of the Board's periodic review of all of its Guidance Documents.

The Committee reviewed, discussed and makes the following recommendations, which will be presented to the full Board for consideration at its meeting in January 2019.

1) Imposing Monetary Penalties pursuant to Va. Code §54.1-2401:

Historically the Board of Nursing has imposed monetary penalties in cases involving fraud, continued competency violations, and practicing on an expired license. The Committee believes these are logical categories of offenses to continue to impose monetary penalties and recommends the Board continue to indicate so in its existing guidance documents (considered individually later in this document).

Additionally, the Committee discussed the possibility of imposing monetary penalties in other case type scenarios. The Committee recommends the Board consider imposing monetary penalties for the following types of offenses:

RECOMMENDATION #1:

That the Board of Nursing consider imposing monetary penalties in cases of noncompliance with a prior Board order by Nursing Education Programs. The range of monetary penalty may be from \$2,000 - \$5,000, depending on the severity of noncompliance, whether it constitutes repeated violations of the terms of the prior Order, and the impact on students especially if fraud is involved (e.g., falsely documenting clinicals were provided students in certain settings/lifespan, false staff credentials, low NCLEX passage rates).

The rationale for imposing monetary penalties in cases of noncompliance with a prior Board order is similar to licensees who are noncompliant with a prior Board order, wherein a reprimand is often ordered (which may or may not be accompanied by indefinite suspension). Since a nursing education program cannot be issued a reprimand, the monetary penalty would be imposed in lieu of the reprimand for noncompliance and more appropriate for a business entity.

RECOMMENDATION #2:

That the Board of Nursing consider imposing monetary penalties on approved nursing education programs in cases of violations of regulations governing nursing education programs that involved fraudulent activity. The range of monetary penalty may be from \$2,000 - \$5,000, depending on the severity of the violation, whether it constitutes a repeated violation, and the impact on students (e.g., falsely documenting clinicals were provided to students in certain settings/lifespan, false staff credentials).

The rationale for imposing monetary penalties on nursing education programs for substantive violations of the governing regulations involving fraudulent activity is to be consistent with sanctions the board imposes on licensed individuals for fraudulent activity.

**** NOTE:** Recommendation #1 and #2 are pending board counsel opinion – whether there is legal authority to impose a monetary penalty on a nursing education program.

****** If the Board adopts these Recommendations and legal counsel opines there is legal authority, a Guidance Document will be developed in accordance and a revision made to existing Guidance Document 90-35 (Non-compliance with Prior Board Orders) to incorporate this scenario.

******If the Board adopts these Recommendations and legal counsel opines there is no legal authority to impose a monetary penalty on a nursing education program, the Board may consider a legislative amendment to Va. Code §54.1-2401.

RECOMMENDATION #3:

That the Board of Nursing consider imposing a monetary penalty in cases of intentional conduct determined to be abuse by a licensee that does not result in the suspension or revocation of the license, certificate or registration.

The rationale is based on the intentional abusive behavior by the respondent licensee, and may be coupled with a reprimand depending on other factors in the case.

RECOMMENDATION #4:

That the Board of Nursing consider imposing a monetary penalty in cases of intentional conduct determined to be neglect by a licensee that does not result in the suspension or revocation of the license, certificate or registration.

The rationale is based on the intentional neglectful behavior by the respondent licensee, and may be coupled with a reprimand depending on other factors in the case.

** If the Board adopts Recommendations #3 and #4, a Guidance Document will be developed in accordance and a revision made to existing Guidance Document 90-12 (Delegation of Authority to BON RN Education and Discipline Staff) to incorporate these scenarios (adding a #6 in section II.E.)

2) Review and Consideration of Existing Guidance Documents

A. The Committee reviewed and makes the following recommendations regarding existing Guidance Documents that involve Monetary Penalties:

RECOMMENDATION #5:

That the Board of Nursing re-adopt #90-3 - Continuing Competency Violations for Nurses in substance. However, consider revising verbiage in the title and throughout the document to reflect “continued” competency (versus “continuing” competency) to be consistent with terminology used in the Board Regulations.

The rationale for doing so is that the Committee determined the proposed progressive actions for continued competency violations associated with license renewals to still be appropriate, including guidance for amounts and scenarios for imposing monetary penalties. However, the verbiage should mirror exact verbiage used in associated Board regulation.

RECOMMENDATION #6:

That the Board of Nursing re-adopt #90-38 - Disposition of Disciplinary Cases against Nurses and Massage Therapists Practicing on Expired Licenses, but consider revising it to double the amount of each monetary penalty per time frame cited, so that they range from

\$200 to \$1,000 for practicing on expired licenses. Additionally, make massage therapist(s) plural in the title and stem sentence.

The rationale for doing so is the Committee felt revisions should be made to increase the monetary penalty amounts imposed to reflect inflation over time (as the amounts have remained the same since adopted in 1999), and due to income received with the associated practice. Additionally, changes are needed in the title and stem sentence to make massage therapist(s) plural to be grammatically correct and consistent with the plural used in nurses.

RECOMMENDATION #7:

*That the Board of Nursing re-adopt #90-61 - **Disposition of Disciplinary Cases against Certified Nurse Aides and Registered Medication Aides Practicing on Expired Certificates or Registrations**, as is, with no changes.*

The rationale for doing so is that this was original adopted in 2012 (versus 1999) so less inflation has occurred, along with lesser income received for unauthorized C.N.A and RMA practice.

RECOMMENDATION #8:

*That the Board of Nursing incorporate revisions to Guidance Document #90-12 - **Delegation of Authority to Board of Nursing RN Education and Discipline Staff** to authorize staff to offer prehearing consent orders (PHCOs) to impose monetary penalties consistent with the above recommendations and individual guidance documents adopted by the Board:*

- a) For existing case types as contained in #90-3, #90-38 and #90-61 (re: continued competency violations and practicing on expired licenses/certificate/registrations) -- incorporating associated revisions made.*
- b) For new case types (ie, nursing education program noncompliance, intentional conduct determined to be abuse or neglect without suspension/revocation of license) – should the Board adopt new guidance documents regarding these scenarios.*

The rationale is to delegate to staff the authority to offer PHCOs in scenarios previously determined appropriate by the Board and contained in new/revised guidance documents, incorporating them by reference into #90-12.

B. The Committee reviewed and makes the following recommendations regarding other existing Guidance Documents related to Discipline:

RECOMMENDATION #9:

*That the Board of Nursing change delegated staff authority in #90-12 - **Delegation of Authority to Board of Nursing RN Education and Discipline Staff** regarding standard of care violation cases to better reflect current Board trends in handling this case type. Specifically, that the Board revise #90-12 (section II.E.4) for staff authority to offer a PHCO for Reprimand in cases of failure to provide acceptable standard of care with patient injury*

(removing any reference to “one time” failure) and leave staff authority for offering a CCA when there is “little to no injury” or related to a systems issue (section II.G.2).

(A draft capturing the revisions will be provided to the full board at the January 29, 2019 full board meeting.)

The rationale for doing so is that, currently in #90-12, the authority exists for staff to offer a PHCO for Reprimand for “one-time failure to provide standard of care”; additionally authority exists for staff to offer confidential consent agreements (CCAs) for “standard of care violation with little or no patient injury”. In reality, cases with one-time standard of care violations without patient injury are often closed undetermined, issued an advisory letter or offered CCAs, rather than offered PHCOs for Reprimand. Further, the Committee believes a better distinction should be made for issuing Reprimands versus CCAs.

Other Discussion regarding Guidance Document #90-12:

The Committee additionally discussed the possibility of adding delegated authority to staff in handling cases involving boundary violation and confidentiality breaches by misuse of social media. However, it decided that matter should be discussed after the review and consideration of the Use of Social Media Guidance Document (#90-48) by the Board. Thus, no recommendation for additions to Guidance Document #90-12 is made at this time regarding this topic.

RECOMMENDATION #10:

*That the Board of Nursing adopt all suggested revisions from staff regarding Guidance Document #90-35 – **Noncompliance with Board Orders**, as detailed below.*

(A draft capturing these revisions will be provided to the full board at the January 29, 2019 full board meeting.)

The Committee discussed and considered staff recommendations for revisions to Guidance Document #90-35, which included:

- improving wording to make it clearer and more consistent within the document;
- numbering the types of noncompliance in the chart for easier usage;
- removing referenced distinction in handling orders entered before and after 12/1/2011 (as no longer applicable since all monitored licensees have orders entered more recently); and
- changing Typical Board Actions for failing to obtain/comply with ordered evaluations to reprimand and indefinite suspension until such time (...as they appear before the board and demonstrate sufficient evidence of safety/competency to resume practice) instead of indefinite suspension “until meets the term” (i.e., submitted the evaluation), as this is practically difficult and does not ensure the evaluation results are considered before a decision is made regarding lifting the suspension and reinstatement of the license.

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That the Board of Nursing re-adopt #90-39 – Indefinite Suspension Timeframes, as is, with no changes.

The Committee reviewed and discussed Guidance Document #90-39 - Indefinite Suspension Timeframes, and believes it still appropriate for the Board to: a) routinely consider a two-year minimum timeframe on indefinite suspensions for cases involving chemical dependency impairment without the option of a stayed suspension with HPMP participation, depending on factors including evidence of chemical dependency treatment and demonstrated period of sobriety; and b) not routinely impose a minimum timeframe on indefinite suspensions due to mental health impairment or practice issues.

ADJOURNED: The meeting was adjourned at 4:55 p.m.

Jodi P. Power