

**VIRGINIA BOARD OF NURSING
MINUTES
July 17, 2012**

TIME AND PLACE: The meeting of the Board of Nursing was called to order at 9:05 A.M. on July 17, 2012 in Board Room 4, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Patricia M. Selig, RN, FNP, PhD; President

BOARD MEMBERS PRESENT:

Joyce A. Hahn, PhD, APRN, NEA-BC; Vice President
Evelyn Lindsay, LPN; Secretary
Allison Gregory, RN, LNP
Louise Hartz, Citizen Member
Jeanne Holmes, Citizen Member
Jane R. Ingalls, RN, CNS, PhD
Florence Jones-Clarke, RN, MS
Trula Minton, MS, RN
William Traynham, LPN

BOARD MEMBERS ABSENT:

John M. Horn, LPN
Patricia C. Lane, RN, BSN
Karen K. Schultz, PhD, MBA, Citizen Member

STAFF PRESENT:

Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director
Brenda Krohn, R.N., M.S., Deputy Executive Director
Gloria D. Mitchell, R.N., M.S.N., M.B.A., Deputy Executive Director
Jodi P. Power, R.N., J.D., Deputy Executive Director
Paula B. Saxby, RN, PhD, Deputy Executive Director
Tomeka Dowling, R.N., M.S, Nursing Education Consultant
Linda Kleiner, RN, Discipline Case Manager
Ann Tiller, Compliance Manager
Amy Davis, Executive Assistant

OTHERS PRESENT:

Howard M. Casway, Senior Assistant Attorney General
Dianne Reynolds-Cane, MD; Director, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions

ANNOUNCEMENTS:

- Committee of the Joint Boards of Nursing and Medicine next meeting is scheduled for October 17, 2012
- NCSBN Annual Meeting and Delegate Assembly is scheduled for August 7 – 10, 2012 in Dallas Texas. Ms. Lindsay and Ms. Power will attend as Delegates; Ms. Douglas will be a presenter for the Delegate Assembly and will be receiving a 10 year service award as Executive Officer.

- Virginia Board of Nursing received award from NCSBN for participation in TERCAP (Taxonomy of Error and Root Cause Analysis Program).

ORDERING OF AGENDA: The agenda was reviewed and ordered.

CONSENT AGENDA: The Board did not remove any items from the proposed consent agenda. Ms. Hartz moved to accept the consent agenda which included the following. The motion was seconded and carried unanimously.

Minutes:

- May 14, 2012 – Panel – Ms. Lindsay
- May 15, 2012 – Quorum – Dr. Selig
- May 16, 2012 – Panel - Dr. Selig
- May 16, 2012 – Panel – Dr. Hahn
- May 17, 2012 – Panel – Dr. Selig
- June 13, 2012 – Committee of the Joint Boards of Nursing and Medicine – Dr. Selig

Reports:

- Health Practitioners Monitoring Program Report of Statistics
- Agency Subordinate Tracking Log
- Board of Nursing Monthly Tracking Log – Licensure & Disciplinary Statistics
- Finance Report
- NNAAP Report

REPORTS:

Executive Director Report:

Ms. Douglas noted the information in the written report and added the following information:

- Krystal Blanton has left the Board of Nursing and taken a position in the Board of Medicine effective July 10, 2012. Darlene Graham has agreed to assume the duties of the senior discipline specialist while the position is vacant.
- Website information, applications, etc have been changed due to the changes in nurse practitioner law effective July 1, 2012. Board staff has been working with IT staff to make changes. Training sessions were presented to Board of Nursing staff regarding the changes.
- A video teleconference will take place with Enforcement staff regarding the changes to law regarding nurse practitioners.
- Website information, applications, etc. have been changed due to the changes in the massage therapy law effective July 1, 2012. Board staff has been working with IT staff to make changes. Training sessions were presented to Board of Nursing staff regarding the changes. Notification of the change that allows the Board of Nursing to accept the MBLEX exam was also sent to massage therapy programs in Virginia.

- A summer intern has been assigned to the Board of Nursing through the Richmond Mayors Academy Summer Program. Sean McGrath is working in all areas of the office.

NCSBN Attorney/Investigator Conference:

Ms. Kleiner attended the meeting on behalf of Ms. Mitchell that was held in Florida. Ms. Kleiner reported the conference was very interesting to learn how other states gather investigative information and how cases are presented. Sessions included topics of drug diversion and case studies.

DIALOGUE WITH AGENCY DIRECTOR:

Dr. Reynolds-Cane was present and provided the following information:

- Proposed legislation for the 2013 General Assembly session is due to the Secretary's office sometime in August 2012.
- Video conference development continues
- Board member orientation is scheduled for September 28, 2012 for new appointments and current Board members. Dr. Cane stated information regarding appointments and reappointments has not been received and is hopeful the information will be available in the next month or two.

OTHER MATTERS:

Status of Appeals:

Mr. Casway reported on the three Board of Nursing cases that are currently in the appeal process:

- Darlene Bamaiyi – the court upheld the Board's decision and Mr. Casway anticipates an appeal with the Court of Appeals.
- Stephanie Kapalka – no date has been set for the hearing in the Alexandria Circuit Court, but possibly sometime in August 2012.
- Susan Prior – hearing to be held in Henrico Circuit Court on August 24, 2012.

Guidance Document Review Process Plan:

Ms. Krohn reviewed the plan to review existing Board of Nursing guidance documents. The guidance documents have been divided into 10 subject matters to be more user friendly. A committee needs to be created to review the guidance documents and make recommendations to the Board. Ms. Hartz, Ms. Lindsay and Ms. Minton offered to serve on the committee.

NCSBN Delegate Assembly Recommendations:

Ms. Douglas reported that Ms. Lindsay and Ms. Power will be attending the Annual Meeting and Delegate Assembly as voting delegates. A summary of recommendations and model acts and rules was provided to Board members for their review and input to Ms. Lindsay and Ms. Power. If the recommendations are adopted by the Delegate Assembly, the information will be used as a guide for Boards.

EDUCATION:

Education Special Conference Committee:

Dr. Hahn reviewed items of interest from the July 11, 2012 minutes of the Education Special Conference Committee by reporting that four nursing education programs were placed on conditional approval.

Dr. Ingalls moved to accept the minutes. The motion was seconded and carried unanimously.

http://www.dhp.virginia.gov/nursing/minutes/2012/EducationIFC_final_07112_012.doc

Report of National Nurse Aide Assessment Program Skills Pass Rates for Virginia for 2011:

Dr. Saxby reported that the skills rate for Virginia is improving and feels a contributing factor is the ongoing training of program staff.

NNAAP Skills Examination Changes:

Dr. Saxby reviewed the letter from Melody Suchowicki from PearsonVue regarding implementation of the changes in the NNAAP skills examination that has been deferred until January 2, 2013. Ms. Douglas thanked Dr. Saxby again for her skilled review of this matter that resulted in NCSBN delaying implementation.

Draft Guidance Document Regarding Clinical Learning Experiences:

Dr. Saxby reviewed the draft guidance document and written comments from stakeholders regarding clinical learning experiences. Discussion of the use of non-nursing healthcare professionals serving as clinical preceptors took place. After discussion, it was decided to remove this section from the draft guidance document. Other changes include to remove the first paragraph in Key Components (page 5) and to incorporate the information explaining the asterisk after item 2 c (page 9) to immediately follow item 2c.

Ms. Hartz moved to accept the draft guidance documents as amended.

U.S. Department of Labor Prohibition on People Under 18 Using Mechanical Lifts:

Dr. Saxby reported on the information from the Department of Labor that prohibits people less than 18 years of age from using mechanical lift which has led to many high school students who are completing nurse aide programs to having difficulty finding employment in assisted living facilities and nursing homes. Employers in assisted living facilities and nursing homes want certified nurse aides to be able to assist with mechanical lifts.

Education Issues:

Ms. Dowling reported on the following information:

- Attendance at program director meetings conducted by Ms. Dowling continue to be well attended. To date, representatives from 70 out of 161 programs have attended. There is a waiting list for the September 2012 meeting.
- Clinical sites continue to be a problem for many education programs throughout the state.

RECESS: The Board recessed at 10:11 A.M.

RECONVENTION: The Board reconvened at 10:30 A.M.

OPEN FORUM: There was no one present that wished to address the Board during the Open Forum.

LEGISLATION/REGULATION:

Status of Regulatory Actions:

Ms. Yeatts reviewed the pending regulatory action for the Board of Nursing.

- Regulations regarding provisional licensure as a registered nurse remains at the Secretary's Office (234 days)
- Regulations regarding continued competency requirements remains at the Governor's Office (411 days)
- Regulations regarding requirements for approval of nursing education programs remains at the Secretary's Office (310 days)
- Regulations regarding failure to report abuse grounds for disciplinary action are at the Governor's Office (99 days)

Petition for Rulemaking Regarding Organ Donation:

Ms. Yeatts reviewed the petition for rulemaking to amend regulations for nursing education programs to require coursework in organ donation received and the comments received during the public comment period of May 21, 2012 through June 15, 2012. Ms. Gregory moved that the Board of Nursing reject the petitioner's request for amendments as there are more appropriate channels to use for education of organ donation. The motion was seconded and carried. Dr. Selig, Dr. Hahn, Ms. Gregory, Ms. Hartz, Ms. Holmes, Dr. Ingalls, Ms. Jones-Clarke, Ms. Minton and Mr. Traynham were in favor of the motion. Ms. Lindsay opposed the motion.

Regulatory Action – Adoption of Final Exempt Regulation for Examination for Certified Massage Therapist:

Ms. Yeatts reviewed HB543 that eliminated the requirement that the examination lead to national certification and to include the licensing examination of the Federation of State Massage Therapy Boards (MBLEX) effective July 1, 2012. Ms. Hartz moved to adopt the final amendments to 18VAC90-50-40 as an action exempt from the requirements of the Administrative Process Act. The motion was seconded and carried unanimously.

Recommendation on Amendments to Regulations Governing the Practice of Nurse Practitioners and Regulations for Prescriptive Authority for Nurse Practitioners:

Ms. Yeatts reviewed the changes in regulations resulting from HB346 effective July 1, 2012. The Committee of the Joint Boards of Nursing and Medicine have reviewed the draft regulations and the information is being submitted to the Board of Nursing for approval and will be submitted to the Board of Medicine at their meeting on August 3, 2012. Ms. Hartz moved to adopt changes to Chapter 30 (nurse practitioners). The motion was seconded and carried unanimously. Dr. Hahn moved to adopt changes to Chapter 40 (prescriptive authority). The motion was seconded and carried unanimously.

Action on Guidance Documents:

Ms. Yeatts reviewed changes necessary to certain Joint Board of Nursing and Medicine guidance documents as a result of changes in the laws governing nurse practitioners effective July 1, 2012.

Dr. Ingalls moved to adopt the changes to Guidance Document 90-56, 90-53 and 90-33. The motion was seconded and carried unanimously. These guidance documents will not go to the Board of Medicine for approval.

Recommendation for Legislative Proposals:

Ms. Yeatts reviewed the draft amendments to the Drug Control Act to transfer responsibility for the protocol on administration of adult immunizations from the Board of Nursing to the Department of Health (VDH) as VDH has responsibility for guidelines for administration of flu vaccine to minors and has an office of epidemiology that seems to be the appropriate agency to develop a protocol for adult immunizations. Mr. Traynham moved to recommend legislative proposal for introduction in the 2013 General Assembly. The motion was seconded and carried unanimously.

Draft Legislation for Criminal Background Checks for Licensure:

Ms. Yeatts reviewed the draft legislation for the inclusion of criminal background checks as part of a pre-licensure requirement. Virginia is one of only four states among the 24 states in the Nurse Licensure Compact that does not conduct a criminal background check. Ms. Douglas provided information that the approximate cost for obtaining the criminal background check would be the responsibility of the applicant and is approximately \$50. Ms. Douglas also reported that in 2008 the Board of Nursing approved to move forward with legislation; however it was not included in the Governor's package due to a concern regarding budget implications. Costs related to an increased number of disciplinary proceedings as a result of increase information regarding criminal convictions; costs related to securing criminal background documents and the appropriate staff to manage these documents. Application fees would need to be increased to cover Board costs.

Ms. Yeatts stated that if the Board approves, the next step would be the draft legislation would be circulated for comments, preparation of a background document would be submitted to the Secretary's Office following Dr. Cane's approval. The Board would possibly not know if the draft legislation would be included in the 2013 General Assembly session until December 2012.

Dr. Hahn moved to move forward with the draft legislation for criminal background checks for the 2013 General Assembly session. The motion was seconded and carried. Ms. Hartz, Ms. Holmes, Ms. Gregory, Ms. Lindsay, Dr. Hahn and Dr. Selig were in favor of the motion. Dr. Ingalls, Ms. Minton, Ms. Jones-Clarke and Mr. Traynham opposed the motion.

CONSIDERATION OF CONSENT ORDERS:

CLOSED MEETING: Ms. Lindsay moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 11:38 A.M. for the purpose of deliberation to consider consent orders. Additionally, Ms.

Lindsay moved that Ms. Douglas, Ms. Krohn, Ms. Mitchell, Ms. Power, Dr. Saxby, Ms. Dowling, Ms. Kleiner, Ms. Tiller, Ms. Davis and Mr. Casway 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 11:41 A.M.

Ms. Lindsay 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.

Ellyn W. Algarin, RN 0001-121823

Dr. Ingalls moved to accept the consent order to reprimand Ellyn Algarin and to indefinitely suspend the professional nursing license of Ms. Algarin. The motion was seconded and carried unanimously.

Wendi Lou Frishman, RN 0001-228794

Dr. Ingalls moved to accept the consent order to indefinitely suspend the professional nursing license of Wendi Lou Frishman. The motion was seconded and carried unanimously.

Carolyn Diane Fletcher, LPN 0002-063079

Dr. Ingalls moved to accept the consent order to reprimand Carolyn Fletcher and to indefinitely suspend the practical nursing license of Ms. Fletcher. The motion was seconded and carried unanimously.

Holland J. Mulford, CMT 0019-006998

Dr. Ingalls moved to accept the consent order to accept the voluntary surrender for indefinite suspension of the massage therapy certification of Holland Mulford. The motion was seconded and carried unanimously.

Robin D. Bidot, RN 0001-212222

Dr. Ingalls moved to accept the consent order to issue an order of reprimand to Robin Bidot and to indefinitely suspend the professional nursing license of Ms. Bidot. The motion was seconded and carried unanimously.

Mary Ellen Cotellese, RN 0001-090106

Dr. Ingalls moved to accept the consent order to indefinitely suspend the professional nursing license of Mary Ellen Cotellese, stay the suspension contingent upon Ms. Cotellese's continued compliance with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Tiffany Porter, LPN 0002-054120

Dr. Ingalls moved to accept the consent order to indefinitely suspend the practical nursing license of Tiffany Porter, stay the suspension contingent upon proof of Ms. Porter's entry into the Health Practitioners Monitoring Program

and remaining in compliance with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Amanda G. Pratt-Smith, RN 0001-208837

Dr. Ingalls moved to accept the consent order to indefinitely suspend the professional nursing license of Amanda Pratt-Smith, stay the suspension contingent upon proof of Ms. Pratt-Smith's re-entry into the Health Practitioners Monitoring Program and thereafter remaining in compliance with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Rebecca L. Kroeger, CNA 1401-111387

Dr. Ingalls moved to accept the consent order to indefinitely suspend the nurse aide certificate of Rebecca Kroeger. The motion was seconded and carried unanimously.

RECESS: The Board recessed at 11:41 A.M.

RECONVENTION: The Board reconvened at 12:59 P.M.

CONSIDERATION OF RECOMMENDATIONS REGARDING APPLICANTS:

CLOSED MEETING: Ms. Lindsay moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 1:02 P.M. for the purpose of deliberation to consider recommendations regarding applicants. Additionally, Ms. Lindsay moved that Ms. Douglas, Ms. Krohn, Ms. Mitchell, Ms. Power, Dr. Saxby, Ms. Dowling, Ms. Kleiner, Ms. Tiller, Ms. Davis and Mr. Casway 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 1:17 P.M.

Ms. Lindsay 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.

Janet Gilling, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the informal conference committee to deny the application of Janet Gilling for certification by endorsement as a nurse aide. The motion was seconded and carried. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

Judy Wain, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to deny the application of Judy Wain for certification by examination as a nurse aide. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

Gene Moseley, Jr., RMA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to deny the application for registration as a medication aide by examination of Gene Moseley. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

Brandie Pultz, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to approve the application for certification as a nurse aide by examination of Brandie Pultz. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

Delisa Hunter, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to approve the application of for certification as a nurse aide by examination of Delisa Hunter and to issue an order of reprimand to Ms. Hunter. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

Ebony Lello, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to approve the application for certification as a nurse aide by examination of Ebony Lello. Mr. Traynham, Dr. Hahn, Dr. Selig, Ms. Lindsay, Ms. Minton, Ms. Gregory, Ms. Holmes, Ms. Ingalls and Ms. Hartz were in favor of the motion. Ms. Jones-Clarke opposed the motion.

ADJOURNMENT: As there was no additional business, the meeting was adjourned at 1:18 P.M.

Evelyn Lindsay, L.P.N.
Secretary

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