

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

September 12, 2012

TIME AND PLACE: The meeting of the Disciplinary Issues Committee was convened at 9 a.m. in Training 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

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 September 12, 2012 to consider nine existing Guidance Documents previously adopted by the Board of Nursing. These Guidance Documents were assigned to this Committee to review by virtue of their content related to discipline work of the Board. This review is being conducted as part of the Board of Nursing's overall periodic review and consideration of all of its Guidance Documents.

The Committee reviewed and makes the following recommendations regarding each of the nine Guidance Documents, which will be presented to the full Board for consideration at a future meeting in either November 2012 or January 2013.

- 1) **90-7**, [Sanctioning Reference Points Manual \(revised March/May 2011\)](#) (PDF) - This Guidance Document was recently reviewed and revised in 2011.

Recommendation: *Readopt as a BON Guidance Document, with the following addition:*

Consider adding to page 6 on the manual: "Sanction Reference Point Worksheets are to be used by the Board of Nursing during informal conferences and with prehearing consent orders offered in lieu of an informal conference. Worksheets are to be provided to

respondents consistent with DHP Director's Policy # 76-3.2. Specifically, respondents are to be provided a copy of the completed Worksheet along with a copy of the order regardless of whether the respondent attended the informal conference conducted by a Special Conference Committee. However, respondents are to be provided a copy of the completed worksheet along with the order only if the respondent or his representative attended the informal conference conducted by an Agency Subordinate. Respondents offered a prehearing consent order in lieu of an informal conference are to be provided a copy of the completed Worksheet along with the prehearing consent order offered."

Rationale: To clarify to the public how and when the BON uses SRPs in one document.

- 2) **90-12**, [Delegation of Authority to Board of Nursing RN Education and Discipline Staff, \(revised May 15, 2012\)](#) – This Guidance Document was recently reviewed and revised in 2012.

Recommendation: *Readopt as a BON Guidance Document, with the following revisions and additions:*

Reorganize the content to group topics together in a more logical format and provide visual improvement and improved readability.

Incorporate by reference all other Guidance Documents that provide delegated authority to staff to offer prehearing consent orders (PHCOs).

Add clear authority for professional staff to conduct probable cause review (as in Bylaws Article XII) of disciplinary cases as well as to issue Advisory Letters (as authorized in law in 54.1-2400.2(F) of the Code of Va.).

Rationale: Improved organization and readability in order to locate topics, and have all delegated authority to professional staff in one place.

- 3) **90-20**, [Nursing Employment Practice under Orders of Probation \(adopted May 15, 2012\)](#) This Guidance Document was recently created and adopted by the Board in May 2012.

Recommendation: *Make no changes, but update the review date to September 2012.*

- 4) **90-35**, [Noncompliance with Prior Board Orders – \(adopted July 20, 2010, revised November 15, 2011\)](#) This Guidance Document was recently revised in November 2011.

Recommendation: *Readopt as a BON Guidance Document, with the following revisions and additions:*

Move and merge together onto front page (first page paragraph 3 before the chart) the professional staff's authority (currently on page 2 in last paragraph after chart) to offer PHCOs consistent with this Guidance Document and the Board's typical actions described in various examples of noncompliance .

Make editorial changes to ensure language is clear and applies to all intended scenarios. Sections edited include not obtaining evaluations, not following treatment recommendations, and licensees not complying with any terms for any 6 month period (not only the first 6 months of probation monitoring).

Rationale: Improved clarity to reader of the Board's intent on cases of noncompliance.

- 5) **90-38**, [Board motion on disposition of cases against nurses practicing with expired licenses \(adopted May 11, 1999, revised May 15, 2012\)](#) This Guidance Document was recently reviewed and revised in May 2012.

Recommendation: *Readopt as a BON Guidance Document, with the following addition:*

Add back into the Guidance Document that if practice on an expired license is greater than one year, then offer PHCO for Reprimand in addition to a \$500 monetary penalty

Rationale: Progressive sanctioning for extensive periods of unlicensed practice, but avoid an informal conference if no willful intent. Staff retains the ability to schedule for an informal conference if extenuating or egregious facts or circumstances for any period of unlicensed practice.

- 6) **90-39**, [Discipline Issues: Indefinite Suspension, Reinstatement following Mandatory Suspension \(adopted May 18, 2010\)](#) This Guidance Document was created and adopted in 2010 based upon 2 issues discussed by the Disciplinary Issues Committee.

Recommendation: Readopt content as a BON Guidance Document, with the following revision:

Separate these two different issues into two different Guidance Documents. One is to be entitled "Reinstatement Following Mandatory Suspension" and the other is to be entitled "Indefinite Suspension Timeframes."

Rationale: These are two different issues and separating with more specific titling will make clearer to the public what the content of the Guidance Documents addresses.

- 7) **90-44**, [Board opinion on reinstatement authority to a Special Conference Committee, \(adopted November 1, 1992\)](#) - This Guidance Document was created in 1992 and revised in 2003.

Recommendation: Delete this as a BON Guidance Document.

Rationale: It is unnecessary since the authority of a Special Conference Committee to a reinstate a licensee is specifically listed in the law, § 54.1-2400(10) of the Va Code.

- 8) **90-54**, [Guidance for Conduct of an Informal Conference by an Agency Subordinate of a Health Regulatory Board at the Department of Health Professions \(adopted 9/21/2004, revised 11/17/2009 and 8/24/2010\)](#) This Guidance Document has been revised a couple of times, most recently in 2010.

Recommendation: *Readopt as a BON Guidance Document, with the following additions and revisions:*

Editorial changes to narrative explanation on page 2 identifying "subordinate" the first time mentioned in the stem

Consider adding in #1 on the narrative page (page 2), last sentence - that the recommended decision will be rendered "within 90 days" to make it consistent with law (§ 2.2-4021 of the Code of Va.)

Consider adding to the end of #6 on the narrative page (page 2) related to Recommended Decision to the Board, bulleted options on what occurs at board consideration if the respondent did or did not appear at the IFC, to make consistent with the board's longstanding practice, the law (§ 2.2-4021 of the Code of Va.), and DHP Director's Policy # 76-3.2 regarding Sanction Reference Point Worksheets. Specifically recommend adding:

- "If the respondent appeared at the IFC, a copy of the Sanction Reference Point Worksheet completed pursuant to Guidance Document #90-7 will be provided to the respondent along with the recommended decision of the subordinate. The respondent has the opportunity to appear and respond in person to the recommended findings of fact, conclusions of law, and recommended sanction when considered by the board, or the respondent may respond in writing."
- "If the respondent did not appear at the IFC, a copy of the Sanction Reference Point Worksheet completed pursuant to Guidance Document #90-7 will not be provided to the respondent. The respondent will not be afforded the opportunity to appear, but may respond only in writing to the recommended findings of fact, conclusions of law, and recommended sanction when considered by the board."
- "No new or additional information will be accepted during agency subordinate recommendation consideration by the board. If responding to the recommended decision in person or in writing, the respondent is limited to providing a response to the recommended findings of fact, the recommended conclusions of law, and recommended sanction, if any. If appearing in person, the respondent is allotted five minutes to respond."

Consider adding an asterisk in block #11 in the flow chart (page 1), along with an explanatory asterisks at the end of #11 on the narrative (page 3), which would appear in the nature of a footnote and say: "However, upon exception and advice of counsel, the Board may refer a case back to an IFC when there is a concern regarding the Board having provided adequate notice to the respondent prior to the IFC."

Rationale: All changes suggested are to reflect current practice of the Board and clarify processes used are pursuant to law, agency policy or other board/agency directives.

- 9) **90-61, [Disposition of cases against CNA's, RMA's, and CMT's for practice with expired registrations or certificates \(adopted May 15, 2012\)](#)** This Guidance Document was recently created and adopted in May 2012.

Recommendation: *Readopt as a BON Guidance Document, with the following addition:*

Add into the Guidance Document that if practice on an expired certificate or registration is greater than one year, then offer PHCO for Reprimand in addition to a \$150 monetary penalty

Rationale: Progressive sanctioning for extensive periods of unauthorized practice, but avoid an informal conference if no willful intent. Staff retains the ability to schedule for an informal conference if extenuating or egregious facts or circumstances for any period of uncertified/unregistered practice.

ADJOURNED: The meeting was adjourned at 10:00 a.m.

Jodi P. Power

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