

**VIRGINIA BOARD OF NURSING
MINUTES
March 19, 2013**

TIME AND PLACE: The meeting of the Board of Nursing was called to order at 9:05 A.M. on March 19, 2013 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Jane R. Ingalls, RN, PhD; President

BOARD MEMBERS PRESENT:

Louise Hartz, Citizen Member; Vice President
Evelyn Lindsay, LPN; Secretary
Allison Gregory, RN, FNP-BC
Joyce A. Hahn, PhD, APRN, NEA-BC
Jeanne Holmes, Citizen Member
John M. Horn, LPN
Florence Jones-Clarke, RN, MS
Trula Minton, MS, RN
Patricia M. Selig, RN, FNP, PhD
William Traynham, LPN, CSAC

BOARD MEMBER ABSENT:

Patricia C. Lane, RN, BSN

STAFF PRESENT:

Jay P. Douglas, RN, MSM, CSAC, Executive Director
Gloria D. Mitchell, RN, MSN, MBA, Deputy Executive Director
Jodi P. Power, RN, JD, Deputy Executive Director
Paula B. Saxby, RN, PhD, Deputy Executive Director
Susan Bodin, RN, EdD, Nursing Education Contract Employee
Linda Kleiner, RN, Discipline Case Manager
Ann Tiller, Compliance Manager
Amy Davis, Executive Assistant

STAFF ABSENT:

Brenda Krohn, RN, MS, Deputy Executive Director

OTHERS PRESENT:

Howard M. Casway, Senior Assistant Attorney General
Dianne L. Reynolds-Cane, MD; Director, Department of Health Professions
Arne Owens, Chief Deputy Director, Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
Dr. Laurie Nagelsmith and Joseph Porter; Excelsior College
Dr. Lauren Goodloe and James Pickral; Virginia Nurses Association

ESTABLISHMENT OF A QUORUM:

With 11 members present, a quorum was established.

ANNOUNCEMENTS:

§ Board vacancy – Citizen Member position

- § Michele Schutt, CMT appointed to Massage Therapy Advisory Board
- § Dr. Patricia Selig, RN Board Member honored for Joint Board service by Virginia Council of Nurse Practitioners at annual conference March, 2013
- § Evelyn Lindsay, LPN Board Member graduated from J. Sargeant Reynolds Community College RN program.

UPCOMING MEETINGS:

- § Committee of the Joint Boards of Nursing and Medicine meeting scheduled for April 17, 2013.
- § Nursing Education Program Directors Consultation and Establishing a New Nursing Program Orientation is scheduled for May 1, 2013.
- § NCSBN Awards Committee, March 28, 2013 – Ms. Douglas will be attending
- § NCSBN APRN Roundtable, April 9, 2013 – Dr. Selig, chair of the Committee of the Joint Boards of Nursing and Medicine will attend contingent upon approval to travel from the Governor’s Office.
- § Medication Aide Curriculum Review Committee is scheduled for March 28, 2013.

ORDERING OF AGENDA: The agenda was reviewed and ordered.

CONSENT AGENDA: Ms. Hartz moved to accept the consent agenda which included the following. The motion was seconded and carried unanimously.

Minutes:

January 28, 2013	Panel – Dr. Selig
January 29, 2013	Quorum – Dr. Selig
January 30, 2013	Quorum – Dr. Ingalls
January 30, 2013	Panel – Dr. Selig
January 30, 2013	Panel – Ms. Hartz
January 31, 2013	Panel – Ms. Hartz
February 13, 2013	Committee of the Joint Boards of Nursing and Medicine – Ms. Hartz

Reports:

Agency Subordinate Tracking Log
 Board of Nursing Monthly Tracking Log-Licensure & Disciplinary Statistics
 Finance Report

DIALOGUE WITH AGENCY DIRECTOR:

Dr. Reynolds-Cane reported on the successful General Assembly session in which all three Department of Health Professions bill were passed. Dr. Reynolds-Cane also provided information regarding the Department of Health Professions will host a Prescription Drug Abuse Reduction Plan workshop on March 25, 2013. The session was designed to bring together stakeholders from throughout the state to put the finishing touches on a state plan for reducing prescription drug abuse in Virginia.

REPORTS:

Executive Director Report:

- § Ms. Douglas provided additional information regarding that the National Council of State Boards of Nursing (NCSBN) will celebrate its 35th anniversary this year. As part of the celebration NCSBN will donate \$170,000 to two organizations. NCSBN will donate \$135,000 to the Foundation of the National Student Nurses' Association (FNSNA) to provide scholarships to qualified undergraduate nursing students. FNSNA was created in 1969 to honor Frances Tompkins, NSNA's first executive director. Since 1974, FNSNA has awarded more than \$2 million in scholarships to undergraduate nursing students. The NCSBN Endowed Scholarship Fund was established in 2009. NCSBN will also donate \$35,000 to the Florence Nightingale International Foundation for its Girl Child Education Fund (GCEF), to support the primary and secondary schooling of girls under the age of 18 in developing countries whose nurse parent or parents have died. This donation will go toward school fees, uniforms, shoes and books. FNIF is the International Council of Nurses' (ICN) premier foundation; it supports and complements the work and objectives of ICN.
- § Ms. Douglas reported on the Nurse Licensure Compact Administrators meeting she attended that focused on compliance, policies related to compliance and resolution of any conflicts between states. Other topics at the meeting included risks and opportunities related to national licensure; comparing the NLC with other interstate compacts; criminal background checks in which the Virginia Board of Nursing is one of 14 states (4 of those are compact states) that do not require pre-licensure criminal background checks; an orientation manual for new compact states is being developed; and Texas, Utah and Iowa are moving forward with developing the advanced practice compact.

VCU/Board of Nursing NCSBN Research Grant:

Ms. Douglas stated a letter has been received by VCU from NCSBN stating NCSBN will not grant research funds, indicating the sample size was not large enough and suggested that Virginia partner with other states to increase the sample size.

Plans are to move forward with the Virginia research study to examine Board of Nursing violations in relation to education preparation of registered nurses. The data being considered for the study include education level, years of experience, school where education was received, place of employment, position type, type of nursing violation, previous violation, gender and age which would require revision of the DHP intake form for registered nurse cases.

NCSBN Midyear Meeting:

Dr. Ingalls expressed her appreciation of being able to attend this meeting. Dr. Ingalls reported that she was able to meet many NCSBN staff members and learn of the extension resources available from NCSBN. Other items of interest include:

- § Opportunity to meet and network with other state boards of nursing was invaluable.

- § Attended the Board President's session which included discussion on Board staff succession; veteran's bridge into licensure; challenges of independent and umbrella boards.
- § Drafts of items that will be presented for the upcoming Annual Meeting/Delegate Assembly.

Ms. Douglas informed Board members that Ms. Hartz did not attend the meeting as authorization for travel was not given by the Governor's Office. Ms. Douglas reported on the following items of interest:

- § Information from the Commitment to Ongoing Regulatory Excellence (CORE) report was presented at the Executive Officer's session. The 2012 Virginia CORE report will be available in May 2013. Virginia is noted to be a high performing Board in discipline cases, and Ms. Mitchell participates in the CORE meetings.
- § A committee will review the NCSBN member board contract which may eliminate the \$3,000 annual fee paid to NCSBN.
- § Executive Officer concerns from across the nation include several of the same issues to include board member appointments, nursing education staff resources.
- § Proposed changes to NCSBN bylaws will be presented at the Delegate Assembly in August 2013.
- § Information regarding the Veteran's Administration implementation of the APRN consensus model was discussed.

RECESS: The Board recessed at 9:56 A.M.

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

Sanction Reference Point Program – Medication Aide Worksheet:

Neal Kauder and Kim Langston from VisualResearch, Inc. presented information regarding the proposed sanction reference point program new medication aide worksheet to be used at informal conferences regarding medication aides. Case types, sanctions given and settlement methods from the 78 medication aide cases that were eligible for sanction reference points were reviewed. The Board amended the proposed worksheet, changing the number of employers to 3 or more (from 5 or more) to be consistent with the nurse aide worksheet. Ms. Hartz moved to adopt the medication aide worksheet as amended. The motion was seconded and carried unanimously.

LEGISLATION/REGULATION:

Status of Regulatory Actions:

Ms. Yeatts reviewed the pending regulatory action for the Board of Nursing as of March 4, 2013:

- § Regulations regarding provisional licensure as a registered nurse remains at the Secretary's Office (493 days)
- § Regulations regarding requirements for approval of nursing education programs remains at the Secretary's Office (560 days)
- § Regulations regarding failure to report abuse grounds for disciplinary action are at the Governor's Office (349 days)
- § Regulations regarding nurse practitioner practice in patient care teams are at the Governor's Office (117 days)

- § Regulations regarding prescriptive authority practice revisions are at the Governor's Office (117 days)
- § Regulations Governing Delegation to an Agency Subordinate (Fast-Track) is in the Department of Planning and Budget for review.
- § Regulations of the Board of Nursing regarding conformity with the Nurse Licensure Compact (Fast-Track) is in the Department of Planning and Budget for review.
- § Regulations Governing the Certification of Massage Therapists regarding regulatory reform (Fast-Track) is in the Department of Planning and Budget for review.
- § Regulations Governing the Registration of Medication Aides regarding regulatory reform (Fast-Track) is in the Department of Planning and Budget for review.

2013 General Assembly Update:

Ms. Yeatts provided a summary of other bills of interest including HB 1499, HB 1501, HB 1564, HB 1672, HB 1791, HB 2120, HB 2161, and SB 950.

Regulations Regarding Provisional Licensure and Report of the Provisional Licensure Committee:

Ms. Douglas reported the Committee met on February 19, 2013 to reconsider recommendations previously adopted. Staff is recommending an amendment to item 4b of 18VAC90-20-215 "Has a passage rate for first-time test takers on the NCLEX that is not less than 80%, calculated on the cumulative results of the past four quarters of all graduates in each calendar year regardless of where the graduate is seeking licensure." Staff recommendation is based on consistency with regulations for Virginia programs. Ms. Hartz moved that the Board accept the amended language. The motion was seconded and carried unanimously.

Ms. Jones-Clarke asked for clarification of the need for the provisional licensure regulations. Ms. Jones-Clarke request for closed session was denied based on advice from Board counsel related to insufficient legal basis. Ms. Douglas stated this would apply to graduates of nursing education programs with less than 500 hours of clinical experiences which includes several out-of-state programs. Currently the Board denies these applications, however with the provisional licensure regulations, the Board would be able to issue a provisional license allowing these applicants to obtain requisite clinical experience which would then allow them to be fully licensed. Ms. Douglas summarized the regulatory history related to Excelsior College and provisional licensure since 2006.

Ms. Hartz moved to adopt the recommendations of the Provisional Licensure Committee. The motion was seconded and carried. Mr. Traynham, Mr. Horn, Dr. Selig, Ms. Lindsay, Dr. Ingalls, Ms. Hartz, Ms. Jones-Clarke, Ms. Minton, Ms. Holmes and Ms. Gregory were in favor of the motion. Dr. Hahn opposed the motion.

Ms. Yeatts stated the next step is the revise the proposed regulations and submit to the Department of Planning and Budget for review.

REPORTS:

NCSBN 2012 Environmental Scan:

Ms. Douglas reported on the report provided by NCSBN containing a review of emerging issues and trends that impact nursing regulation. The report captures the majority of influences from issues, threats and opportunities that have emerged for state boards of nursing throughout 2012. The report is intended to describe the present state of the state boards of nursing, provide a glimpse into the next year and serve as a catalyst for strategic planning. Board members acknowledged that this document was extremely informative.

DHP Key Performance Measures:

Ms. Douglas reviewed the report for the quarter ending September 30, 2012.

- § Patient care case processing clearance rate for nursing cases is at 101% (goal of 100%). Nurse aide 117% (goal of 100%)
- § Age of pending cases for cases open over 250 business days is 9% (goal of 25%). Nurse aide 24% (goal of 25%)
- § Cases closed within 250 business days for last 8 quarters is 93% (goal of 90%). Nurse aide 87% (goal of 90%)
- § Customer satisfaction rate is 95.7% (goal of 97%) for nursing. Nurse aide 97.1% (goal of 97%).
- § 100% licensed within 30 days of complete application (goal of 97%) for nursing. Nurse aide 97.1% (goal of 97%).

NCSBN Promising Practice Consultants:

Ms. Mitchell attended the NCSBN February 6, 2013 meeting in Chicago where she was asked to provide information that made the Board of Nursing discipline program effective. Ms. Mitchell contributed the effectiveness in part to the sanction reference point system and guidance documents 90-12 and 90-35. This group is a sub-group of the CORE Committee and is generally comprised of staff from boards of nursing that are identified as high performing boards regarding discipline cases.

OTHER MATTERS:

Appeal Update:

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

- Susan Prior – The hearing held in Henrico Circuit Court in November affirmed the Board’s decision. A notice of appeal to the Virginia Court of Appeals has been received; no date has been scheduled at this time.
- Rosaline Kamara – Notice of appeal filed in April 2012, no follow up until late November 2012 when a transcript of the hearing was supplied. The attorney has not filed a petition for appeal; it is likely to be dismissed for not meeting deadlines.
- Darlene Bamaiyi – Hampton Circuit Court upheld the Board’s decision. An appeal has been filed with the Virginia Court of Appeals and is scheduled for April 2, 2013.
- Sarah Goins – A notice of appeal has been filed. Although miscommunication between the attorney and Board of Nursing staff occurred, the filing date for petition of appeal was missed and requested an extension. The Board Executive Director and President

denied the request because the Board of Nursing is not authorized to extend jurisdictional matters.

- Akintende Kuye – A notice of appeal pro se was filed and then an attorney who filed a second notice of appeal and a motion to reconsider order based on insufficient notice of the informal conference due to a change of address. The Board requested additional information and none was provided by the attorney. The Board denied the motion for reconsideration and has not heard anything further.

DHP Revenue, Expenditure, and Cash Balance Analysis:

Ms. Douglas reviewed the report indicating no recommendations for changes in fees based on the analysis of revenues and expenditures based on the cash balance at the end of the 2010 – 2012 biennium and the projections for the 2012 – 2014 biennium. Ms. Hartz moved to accept the recommendation for no changes in fees. The motion was seconded and carried unanimously.

Dr. Hahn asked if additional staffing could be obtained to help with the workload of the Board. Dr. Cane and Ms. Douglas indicated no new positions are possible at this time.

Scheduling of Informal Conferences for July to December 2013:

Dr. Ingalls and Ms. Douglas reported that scheduling informal conferences for the remaining of the year could be challenging with possible upcoming Board member vacancies in June 2013. Dr. Ingalls asked Board members whose terms expire in June to let her know if they are able to serve beyond their term if their replacement has not been named by June 2013.

Letter from NCSBN President:

The letter from Myra Broadway, NCSBN President was provided as information to Board members. The letter summarized the highlights of the NCSBN Board of Directors meeting held February 4-6, 2013.

NCSBN Uniform Licensure Requirements:

The information from NCSBN indicating the uniform licensure requirements not yet implemented in Virginia was provided to Board members as information.

Recognition of 30 Years of Service to the Board:

Board members and staff recognized Howard Casway for 30 years of service to the Board of Nursing as Board counsel. Ms. Tysinger, Ms. Barrett and Ms. Mitchell from the Attorney General’s office were present as well as former Board of Nursing executive directors, Ms. Dorsey and Ms. Durrett.

RECESS: The Board recessed at 12:04 P.M.

RECONVENTION: The Board reconvened at 1:37 P.M.

Dr. Cane, Mr. Owens, Ms. Yeatts and Ms. Gregory left the meeting.

Additional Information Submitted by Respondents Regarding Agency Subordinate Recommendations:

Mr. Casway provided an overview of the process regarding information submitted by respondents after an informal conference before an agency subordinate. Discussion regarding staff recommendations imposing limits to information submitted related to date submitted, content of information submitted, and information in the letter sent to respondents indicating the process. After discussion, Mr. Traynham moved that the Board not accept information from respondents after the deadline date indicated in the letter sent to respondents. The motion was seconded and carried unanimously. Additionally, staff will revise the cover letter sent to respondents who did not appear at their informal conference.

EDUCATION:

Education Special Conference Committee:

Items of interest from the March 13, 2013 minutes of the Education Special Conference Committee were reviewed. Ms. Hartz moved to accept the minutes as presented. The motion was seconded and carried. Ms. Jones-Clarke, Ms. Hartz, Dr. Hahn, Mr. Traynham, Mr. Horn, Dr. Selig, Dr. Ingalls, Ms. Holmes and Ms. Minton were in favor of the motion. Ms. Lindsay opposed the motion.

http://townhall.virginia.gov/L/GetFile.cfm?File=C:\TownHall\docroot\meeting\27\19269\Minutes_DHP_19269_v1.pdf

RECOMMENDED DECISION OF THE EDUCATION SPECIAL CONFERENCE COMMITTEE:

ECPI University Emerywood Associate Degree Registered Nursing Education Program

Dr. Selig moved to accept the recommended decision of the Education Special Conference Committee to release ECPI Emerywood Associate Degree Registered Nursing Education Program from the restrictions contained in the Board's orders and to grant full approval to operate a registered nursing education program. The motion was seconded and carried unanimously.

Norfolk State University Associate Degree Registered Nursing Education Program

Ms. Hartz moved to modify the recommended decision of the Education Special Conference Committee to withdraw the approval of Norfolk State Associate Degree Registered Nursing Education Program to operate a registered nursing education program, stay the withdrawal of approval, and the program shall remain on conditional approval based on terms and conditions. The motion was seconded and carried unanimously.

Education Issues:

Dr. Saxby provided information on the following:

- § NNAAP report for June 2012 through February 2013.
- § Dr. Saxby participated in a meeting of the NCSBN Distance Learning Committee via telephone on March 18, 2013. Standards and model rules are being developed and will be sent to the Board

of Directors meeting in May. Information will then be voted on at the NCSBN Annual meeting/Delegate Assembly in August 2013.

Mr. Horn stated he attended the final graduation class of the Obici Hospital School of Nursing. The program closed after 50 years due to funding issues.

Dr. Saxby left the meeting.

CONSIDERATION OF CONSENT ORDERS AND 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 2:45 P.M. for the purpose of deliberation to consider consent orders and recommendations regarding applicants. Additionally, Ms. Lindsay moved that Ms. Douglas, Ms. Mitchell, Ms. Power, Ms. Tiller, Dr. Bodin, Ms. Kleiner, 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 2:56 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.

Tora Doung, CMT Applicant

Mr. Traynham moved to accept the recommended decision of the informal conference committee to approve the application of Tora Doung for certification as a massage therapist by endorsement, and further, place Ms. Doung on probation for 12 months of actual massage therapy practice subject to terms and conditions. The motion was seconded and carried unanimously.

Meizhi Hou, CMT Applicant

Mr. Traynham moved to accept the recommended decision of the informal conference committee to deny the application of Meizhi Hou for certification by examination as a massage therapist. The motion was seconded and carried unanimously.

William David Brown, CMT Applicant

Mr. Traynham moved to accept the recommended decision of the informal conference committee to approve the application of William Brown for certification by examination as a massage therapist contingent upon his entry into and compliance with the Health Practitioners Monitoring Program and further, to reprimand Dr. Brown. The motion was seconded and carried unanimously.

Ashley Jones, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to deny the application of Ashley Jones for certification by endorsement as a nurse aide. The motion was seconded and carried unanimously.

Jacqueline Logan, CNA Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to deny the application of Jacqueline Logan for certification by endorsement as a nurse aide. The motion was seconded and carried unanimously.

Talia Steele, CNA 1401-141069; LPN Applicant

Ms. Holmes moved to accept the recommended decision of the agency subordinate to approve the application of Talia Steele for licensure by repeat examination as a practical nurse and to reprimand Ms. Steele. The motion was seconded and carried unanimously.

Tiffany Laurel Termeer-Brownlee, RN 0001-185937; LNP 0024-165869

Ms. Minton moved to accept the consent order to reinstate the professional nursing license and the nurse practitioner license of Tiffany Termeer-Brownlee. The motion was seconded and carried unanimously.

Tammy Hill, CNA 1401-041299

Ms. Minton moved to accept the consent order to indefinitely suspend the nurse aide certificate of Tammy Hill until such time as she can appear before the Board and prove that she is safe and competent to practice. The motion was seconded and carried unanimously.

Melissa J. Broyles, LPN 0002-074081

Ms. Minton moved to accept the consent order to revoke the practical nursing license of Melissa Broyles. The motion was seconded and carried unanimously.

Lindsay Middleton, RN 0001-179535

Ms. Minton moved to accept the consent order to accept the voluntary surrender for indefinite suspension the professional nursing license of Lindsay Middleton until such time she can appear before the Board and prove that she is safe and competent to practice. The motion was seconded and carried unanimously.

Victoria Hamshar, RN 0001-213374

Ms. Minton moved to accept the consent order to indefinitely suspend the professional nursing license of Victoria Hamshar, stay the suspension upon proof of Ms. Hamshar's continued compliance with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Paula Powers, RN 0001-093329

Ms. Minton moved to accept the consent order to reprimand Paula Powers and to indefinitely suspend the professional nursing license of Ms. Powers until

such time she can appear before the Board and prove that she is safe and competent to practice. The motion was seconded and carried unanimously.

Wendl Barton, RN 0001-167990

Ms. Minton moved to accept the consent order to indefinitely suspend the professional nursing license of Wendl Barton, and stay the suspension upon proof of Ms. Barton'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.

Deborah Ziegler, RN 0001-198383

Ms. Minton moved to accept the consent order indefinitely suspend the professional nursing license of Deborah Ziegler, and stay the suspension upon proof of Ms. Ziegler's 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.

Tabitha Smith, LPN 0002-075979

Ms. Minton moved to accept the consent order to indefinitely suspend the practical nursing license of Tabitha Smith, and stay the suspension upon proof of Ms. Smith's 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.

Samuel L. Alvarez, RMA 0031-005500

Ms. Minton moved to accept the consent order to accept the voluntary surrender for indefinite suspension of the medication aide registration of Samuel Alvarez until such time as he is able to appear before the Board and prove that he is safe and competent to practice. The motion was seconded and carried unanimously.

ADJOURNMENT:

As there was no additional business, the meeting was adjourned at 2:57 P.M.

Evelyn Lindsay, L.P.N.
Secretary

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