

**VIRGINIA BOARD OF NURSING
MINUTES
July 21, 2009**

TIME AND PLACE: The meeting of the Board of Nursing was called to order at 9:05 A.M. on July 21, 2009 in Board Room 2, Department of Health Professions, 9960 Mayland Drive, Suite 201, Henrico, Virginia.

PRESIDING: Lynne M. Cooper, Citizen Member, President

BOARD MEMBERS PRESENT:

Patricia M. Selig, R.N., F.N.P., Ph.D., Vice President
Peregrin C. Francisco, R.N., M.S.A., Secretary
Joyce A. Hahn, Ph.D.; APRN; NEA-BC
Brenda L. Hale, R.N.
John M. Horn, L.P.N.
Florence Jones-Clarke, R.N., M.S.
Evelyn Lindsay, L.P.N.
Judith E. Piersall, R.N., B.S.N.
G. Maxine Ponn, L.P.N.
Karen K. Schultz, Ph.D., M.B.A.

BOARD MEMBER ABSENT:

Patricia C. Lane, R.N., B.S.N., M.B.A., H.C.A.

STAFF PRESENT:

Jay P. Douglas, R.N., M.S.M., C.S.A.C., Executive Director
Gloria D. Mitchell, R.N., M.S.N., M.B.A., Deputy Executive Director (joined later)
Jodi P. Power, R.N., J.D., Deputy Executive Director
Brenda Krohn, R.N., M.S., Deputy Executive Director
Paula B. Saxby, R.N., Ph.D., Deputy Executive Director
Jessica Ressler, R.N.C., M.S.N., Nursing Education Consultant
Linda Kleiner, R.N., Discipline Case Manager
Ann Tiller, Compliance Manager
Amy Davis, Administrative Assistant

OTHERS PRESENT:

Howard M. Casway, Senior Assistant Attorney General
Sandra Whitley Ryals, Director, Department of Health Professions
Emily O. Wingfield, Chief Deputy Director, Department of Health Professions
Elaine Yeatts, Policy Analyst, Department of Health Professions
Chelsea Miller, representative from Hancock, Daniel, Johnson & Nagle
Charissa Foster, representative from Hancock, Daniel, Johnson & Nagle
Michele Satterlund, representative from VCNP and VANA
Carol Hrusovshy, Fortis College, Norfolk
Lucy Smith, Fortis College, Richmond

**ESTABLISHMENT OF
A QUORUM:**

With eleven members of the Board present, a quorum was established.

ANNOUNCEMENTS:

- Welcome Dr. Karen Schultz, appointed to the Citizen Board member position vacated by Linda Gross.
- The Committee of the Joint Boards of Nursing and Medicine next meeting is scheduled for October 14, 2009.
- National Council of State Boards of Nursing Delegate Assembly and Annual Meeting is scheduled for August 12 – 14, 2009 in Philadelphia. Ms. Lane and Ms. Douglas will be attending as delegates funded by NCSBN. Due to budgetary constraints, additional Board members and staff will not attend. Ms. Douglas noted that Ms. Lane is running for a position on the NCSBN Leadership Succession Committee
- Nurse Licensure Compact Administrator Meeting is scheduled for August 11, 2009 in Philadelphia prior to the Delegate Assembly. Ms. Douglas will attend.

ORDERING OF AGENDA: The agenda was reviewed and ordered.

CONSENT AGENDA: The Board removed four items from the proposed consent agenda. Ms. Hale moved to accept the consent agenda which includes:

Minutes:

May 18, 2009 – Panel – Dr. Selig
May 19, 2009 – Board Meeting – Ms. Cooper
May 20, 2009 – Quorum – Ms. Cooper
May 20, 2009 – Panel – Ms. Cooper
May 20, 2009 – Panel – Dr. Selig
May 21, 2009 – Panel – Ms. Cooper
June 16, 2009 – Telephone Conference Call – Ms. Cooper
May 19, 2009 – Education Committee Meeting – Ms. Piersall

Reports:

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

REPORTS:

Status of Appeals:

Mr. Casway reported on the appeal regarding the suspension of Kathleen Yeary's nurse practitioner license being handled by Scott County Circuit Court.

The Board suspended the license of Sandra Minton, L.P.N. and will know more about the grounds for appeal after the petition for appeal is filed.

Kenneth Wright, L.P.N. is scheduled for a formal hearing on August 25, 2009. The Board suspended his license after an informal conference held before an agency subordinate. The appeal was based on an issue with the notice. The Board agreed to schedule a formal hearing in lieu of the appeal.

Medication Aide Program:

Ms. Krohn reported on the status of applications and the August 1, 2009 deadline for registration of medication aides working in assisted living facilities. There remains, however, over 700 applicants that have been approved to test and have not done so as yet. A written report was submitted.

NCLEX and NNAAP Exam Reports:

Dr. Saxby reviewed the first two quarters of 2009 NCLEX results. The national NCLEX-RN pass rate is 89.5%, and Virginia's pass rate is 90.02%. The national NCLEX-PN pass rate is 84.1%, and Virginia's pass rate is 75.02%. The Education Committee is working with those programs that have a pass rate of 80% or less. Ms. Ressler identified 18 practical nursing education programs and 6 registered nursing education programs that have a NCLEX pass rate less than 80%. Ms. Piersall noted that the majority of schools with low pass rates are proprietary programs and that with the last revision of the regulations; the Board now has the ability to enforce acceptable pass rates in order to continue admitting students and maintain approval. Ms. Douglas noted that additional survey visits to low performing schools will be required which will increase costs for the Board. Dr. Selig expressed her appreciation to Board of Nursing staff for their efforts with nursing education program issues

Dr. Saxby reviewed the NNAAP results. The national standard pass rate is 80%; the pass rate in Virginia is 62 – 67%. Pearson and NACES are offering training sessions throughout Virginia to assist nurse aide education program staff in questions and concerns they may have related to nurse aide curriculums.

Robert Wood Johnson Foundation Initiative on the Future of Nursing:

Dr. Saxby provided information from the above meeting held on July 14, 2009. The Institute of Medicine (IOM) in collaboration with the Robert Wood Johnson Foundation (RWJF) will establish a major initiative on the future of nursing. The initial cornerstone of the program will be a major study that will produce a transformational report on the future of nursing. The IOM committee will define a clear agenda and blueprint for action including changes in public and institutional policies at the national, state, and local levels. The Committee's recommendations will address a range of system changes, including innovative ways to improve health care quality and address the nursing shortage in the United States. The first 13 months of the two-year initiative will involve information gathering and preparation of the consensus report, including a brief interim report. Three regional town hall meetings, as well as two technical or policy oriented workshops will provide input to the study committee. Near the end of the two-year period, the RWJF and IOM will sponsor a national conference to discuss the issues raised by these activities. Target audiences for the initiative will include national policymakers, state and local government leaders, advocacy organizations,

professional societies, licensing bodies, educational institutions, education researchers, and individuals who are considering careers in nursing.

Continued Competence Committee:

Ms. Cooper and Ms. Douglas reported on the meeting held May 19, 2009 that included information regarding a grant available from AARP and VNA. Research continues by VCU grad student Rebecca Shaulis, and the Committee will meet again in September. Board staff will work with VNA to develop a conference on continued competence.

Executive Director Report:

Ms. Douglas reviewed information from the report that included Missouri has passed legislation to join the Nurse Licensure Compact with an implementation date of 2010. This will bring the total of state that participate in the Nurse Licensure Compact to 24. Also, Ms. Douglas brought to the Board's attention that additional days have been scheduled to conduct formal hearings in an effort to reduce length of other scheduled days. Ms. Douglas expressed her appreciation to Board members being available for those days. A full written report was submitted.

RECESS: The Board recessed at 10:00 A.M.

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

LEGISLATION/REGULATIONS:

Finance Presentation and NOIRA Regarding Fees:

Mark Monson, Deputy Director, Department of Health Professions and Charles Giles, Budget Manager, Department of Health Professions provided information related to Department of Health Professions budget concerns. Mr. Monson stated the *Code of Virginia* charges boards with the financial obligation to levy fees to cover administration of each board. Revenues are projected 6 years in advance, and if revenues are 10% above or below expenses, action must be taken to adjust fees accordingly. Projections for FY 2010 indicate a \$966,000 shortfall for the Board of Nursing and a 14.6 million dollar shortfall for FY 2014 for the Board of Nursing. An overview of the projected revenue and expenses presented was and information regarding the need to begin the regulatory process as soon as possible was provided. The process can take 18 – 24 months, estimated time to implement the fee increase is July 2011. Mr. Monson identified VITA related costs as a significant increase (100% since 2004) in costs and projected expenses.

Mr. Giles reviewed the document provided to the Board that included Department of Health Professions financial data and Board of Nursing revenue and expenditure data and options for fee increases that include significant increase in registered nurse, licensed practical nurse fees and the possibility of annual renewal for certified nurse aides.

Ms. Douglas indicated education staff were asked to estimate costs of conducting initial visits and other visits. Included in the handout, \$1,650 for initial application and review; \$2,206 for survey visits after first glass graduates and \$2,206 for continued approval survey visits.

Mr. Monson emphasized that the Board was not being asked to vote on specific fee increase amounts at this time and that as more information is available about projected costs, this information will be provided for the Board and factored into recommendations for increases in fees.

After discussion of the information provided and discussion of the NOIRA, Ms. Francisco moved to adopt a Notice of Intended Regulatory Action to increase fees associated with the Board of Nursing

Ms. Mitchell joined the meeting.

PUBLIC HEARING:

Requirements for Foreign Trained Nurses – 18VAC90-20

The hearing was held to hear public comments on proposed regulations for elimination of the Commission on Graduates of Foreign Nursing Schools (CGFNS) qualifying examination. Wanda Blanks, court reporter, recorded the public hearing.

Ms. Cooper invited individuals that wish to make comment come forward and address the Board. Nine individuals (listed below) were present and addressed the Board; all expressed their opinion that the Board remove the CGFNS requirement. Representatives from the Philippine Nurses Association included Carmina Baustista, Guia Caliwagan, Carmen Roaquin, Merla Marcelo. Also present was Nancy Dimaano, R.N.; Becky Bowers-Lanier, representing the Virginia Nurses Association; Amor Collera; Faruk Pressuzela, M.D., former medical examiner; and Rummy Mohta, representing the Asian American Association of Virginia.

Ms. Cooper stated that written comment should be directed to Ms. Douglas, Executive Director of the Board of Nursing. Electronic comment can be posted on the Virginia Regulatory Townhall or sent by email. The Comment period will close on July 24, 2009.

DIALOGUE WITH AGENCY DIRECTOR:

Ms. Ryals discussed information that included the following topics:

- Virginia Performs Quarterly Performance Measurement ending with the third quarter of 2009.
 - o Clearance rate (number of cases received vs. received), Board of Nursing rate is 128% (goal is 100%)
 - o Age of Pending Caseload (percent of cases older than 250 days), Board of Nursing rate is 10% (goal is 25%).
 - o Time to Disposition (percent resolved within 250 days), Board of Nursing rate is 88% (goal is 90%).
 - o Licensing within 30 days of receipt of documents, Board of Nursing rate is 100%
 - o Customer Satisfaction, Board of Nursing rate is 96% (goal is 97%)
 - o Ms. Ryals noted the significant achievements by the Board of Nursing and the Department of Health Professions related to all performance measures.

- Name change from the Health Practitioners Intervention Program to the Health Practitioners Monitoring Program was effective July 1, 2009. The change was made to more accurately reflect the purpose of the program.
- Health Care Work Force Data Center continues in the research process. Reports are expected to be available by September, 2009. Ms. Ryals suggested the Board schedule time at a future meeting to review specifics of the reports. Ms. Ryals noted Ms. Cooper and Ms. Jones-Clarke along with Ms. Douglas and Dr. Saxby attended the recent advisory council meeting.
- Updated news release and Q&A were made available in June regarding the compromise of the Prescription Monitoring Program (PMP) system in April. A call center was established to provide assistance. Notices were mailed to individuals that were identified as having social security numbers in the system alerting them to be diligent in checking their credit reports. Notices were also mailed to registered users of the PMP. Ms. Ryals noted that full access to PMP is anticipated in the near future.

RECESS: The Board recessed at 12:30 P.M.

RECONVENTION: The Board reconvened at 1:30 P.M.

EDUCATION ISSUES: **Proposed Guidance Document – Patient Simulation in Nursing Education:**
Dr. Saxby and Ms. Ressler reviewed information from the June 18, 2009 Education Committee meeting that resulted in the development of a proposed guidance document regarding patient simulation in nursing education programs. Dr. Saxby identified key components, definition of terms, and expectations for using simulation in nursing education programs. After discussion and suggested changes, Dr. Hahn moved that the Board adopt the proposed guidance document as amended. The motion was seconded and carried unanimously.

Proposed Guidance Document – Clinical Hours for LPN to Pre-licensure RN Transition/Bridge:

Dr. Saxby and Ms. Ressler reviewed information from the June 18, 2009 Education Committee meeting that resulted in the development of a proposed guidance document regarding the transfer of practical nursing program clinical hours to pre-licensure registered nursing bridge programs. After discussion and suggested changes, Dr. Hahn moved to adopt the proposed guidance document as amended. The motion was seconded and carried unanimously.

Proposed Guidance Document – Requests for Accommodations for NCLEX and NNAAP Testing:

At its meeting on May 19, 2009 the Board voted to delegate review accommodation requests to Board staff in accordance with established criteria. The proposed guidance document was reviewed and Dr. Hahn moved to adopt the proposed guidance document. The motion was seconded and carried unanimously.

Board of Nursing Costs Related to Nursing Education Programs:

Dr. Saxby and Ms. Ressler reviewed information that specifies the time and financial commitment to establish a nursing education program. The cost of an average approval process for a new nursing education program is \$4,042.00. Continued approval survey visits cost \$2,206.00; there are approximately 22 of these types of visits per year. Survey visits to an existing nursing education program whose NCLEX pass-rate is below 80% for two years is \$1,564.00.

Education Special Conference Committee:

The Board considered the recommendations of the Education Special Conference Committee from its meeting on July 15, 2009. Ms. Francisco moved to adopt the recommendations as submitted. The motion was seconded and approved unanimously.

Excelsior College Meeting:

Dr. Saxby and Ms. Douglas provided information from a meeting Excelsior College requested with Marilyn Tavenner, Secretary of Health and Human Resources that Ms. Ryals, Ms. Douglas, and Dr. Saxby attended at the request of Secretary Tavenner, to discuss Board of Nursing regulations regarding distance programs. Excelsior representatives at the meeting were encouraged to contact the Board of Nursing if they have questions in the future. Excelsior staff were provided with information regarding the status of the approval of regulations that affect programs like Excelsior.

RECESS: The Board recessed at 2:40 P.M.

RECONVENTION: The Board reconvened at 2:50 P.M.

LEGISLATION/REGULATIONS:

Proposed Regulations for Pain Management for Nurse Practitioners – Amendments to 18VAC90-40:

Ms. Yeatts reviewed information that the Governor's policy office has requested that the pain management regulations be withdrawn. They will not be approved for publication. The identical regulations for physicians and physician assistants have also been withdrawn by the Board of Medicine.

Dr. Selig moved to withdraw the regulatory action for management of chronic, non-malignant pain by nurse practitioners, amendments to 18VAC90-40. The motion was seconded and carried unanimously.

Regulatory Action – Fast-track Amendments to Nurse Licensure Compact Rules:

Ms. Yeatts reviewed the draft amendments to conform the rules for issuance of a single state license or multistate licensure privilege and limitations of a multistate licensure privilege to Model Rules for the Compact.

Ms. Francisco moved to adopt amendments to Section 181 as a fast-track action. The motion was seconded and carried unanimously.

OTHER MATTERS:

Summary of National Council of State Boards of Nursing (NCSBN) 2009

Delegate Assembly Recommendations:

Ms. Douglas reported that due to restrictions on travel expenses, the Board can have only two representatives attend the NCSNB Annual Meeting and Delegate Assembly. Unfortunately, Ms. Lindsay will not be able to attend; Ms. Lane and Ms. Douglas will attend and serve as delegates for Virginia. This will be funded by NCSBN. Ms. Lane is running for a position on the NCSBN Leadership Succession Committee. Ms. Douglas invited Board members to bring comments to her to take to NCSBN regarding the Delegate Assembly recommendations included in Board materials.

Summary of Non-Routine Applications:

Ms. Power reviewed information from a summary of statistics regarding processing of non-routine applications for licensure and certification for registered nurses, practical nurses, certified nurse aides, and certified massage therapists by Board staff received January 1, 2009 through June 30, 2009. Total number of applications received with cause for denial was 632. 88% of the applications had criminal convictions; 10% had impairment issues; 10% had prior actions in Virginia or another state. For those that reported conviction history, 70% had only one conviction, 30% had more than one conviction. A breakdown of applications by occupation and most common categories of convictions reported was reviewed. Ms. Cooper noted that review of these applications was becoming more time consuming. Mr. Casway encouraged the board to take action when learning of conviction information in application and discipline cases. The Board expressed their desire to receive non-routine applicant data every six months and to include medication aides in the next report.

Revised Board of Nursing Regulations and Health Practitioners

Intervention Program Regulations:

Ms. Douglas reviewed the changes, noting the change in name to Health Practitioners Monitoring Program (HPMP) and eligibility criteria. Board members were urged to be sure licensees meet the HPMP criteria before ordering licensees into the program.

Meeting Dates for Committee to Review Guidance Document 90-5:

Mr. Horn, Ms. Jones-Clarke, and Dr. Selig volunteered to meet with Ms. Douglas on Wednesday, July 22, 2009 to discuss Guidance Document 90-5.

Review of Guidelines for the Administration of Influenza Vaccine to Minors:

The Virginia Department of Health provided draft documents asking the Board of Nursing to develop and issue guidelines together with the Board of Health, for the administration of influenza vaccine to minor by licensed pharmacists, registered nurses or licensed practical nurses pursuant to §54.1-3408 by August 31, 2009. The Board of Nursing discussed and identified questions that need to be clarified before the Board can move forward. The Board expressed concern that there was not adequate time for them to review this document which was provided by the Health Department on Thursday prior to the meeting today. Ms. Cooper asked that this concern be conveyed to the Health Department. Dr. Schultz moved the Board of Nursing delegate authority to

staff to approve the guidelines for the administration of influenza vaccine to minors once identified questions and concerns are address and after consultation with Board of Nursing Vice President, Dr. Selig. The motion was seconded and carried unanimously.

Dr. Saxby and Ms. Ressler left the meeting.

RECESS: The Board recessed at 4:20 P.M.

RECONVENTION: The Board reconvened at 4:25 P.M.

CONSIDERATION OF CONSENT ORDERS AND AGENCY SUBORDINATE RECOMMENDATIONS:

CLOSED MEETING: Ms. Francisco moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 4:25 P.M. for the purpose of deliberation to reach a decision regarding consideration of consent orders and agency subordinate recommendations. Additionally, Ms. Francisco moved that Ms. Douglas, Ms. Mitchell, Ms. Power, Ms. Krohn, Ms. Tiller, 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 5:10 P.M.

Ms. Francisco 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.

Barbara Annette Powell, R.N. 0001-102515

Ms. Lindsay moved to accept the consent order to indefinitely suspend the professional nursing license of Barbara Powell, stay said suspension contingent upon proof of Ms. Powell's continued compliance with the recovery monitoring contract with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Marcia K. Kittrell, L.P.N. 0002-050523

Ms. Piersall moved to accept the consent order to indefinitely suspend the Marcia Kittrell's right to renew her practical nursing license, stay said suspension contingent upon proof of payment of the monetary penalty specified in the Consent Order. The motion was seconded and carried unanimously.

Pamela H. Congleton, L.P.N. 0002-050157

Ms. Francisco moved to accept the consent order for the voluntary surrender for indefinite suspension of Pamela Congleton's license to practice as a practical nurse until such time as Ms. Congleton can appear before the Board and provide sufficient evidence that she is safe and competent to practice. The motion was seconded and carried unanimously.

Angela Schroeder, L.P.N. 0002-067101

Ms. Ponn moved to accept the consent order to indefinitely suspend the practical nursing license of Angela Schroeder until such time as Ms. Schroeder can appear before the Board and provide sufficient evidence that she is safe and competent to practice. The motion was seconded and carried unanimously.

William W. Minor, C.M.T. 0019-001398

Ms. Lindsay moved to accept the consent order to accept the voluntary surrender for indefinite suspension of William Minor's certificate to practice massage therapy. At such time as Mr. Minor shall provide the Board with proof that he has successfully completed the required number of continuing education hours, the Board may reinstate Mr. Minor's certificate. The motion was seconded and carried unanimously.

Dawn Muth, R.N. 0001-138400

Ms. Lindsay moved to accept the consent order to indefinitely suspend the professional nursing license of Dawn Muth until such time as Ms. Muth can appear before the Board and provide sufficient evidence that she is safe and competent to practice. The motion was seconded and carried unanimously.

Michael Breeden, R.N. 0001-170697

Ms. Lindsay moved to accept the consent order to indefinitely suspend the professional nursing license of Michael Breeden, stay said suspension contingent upon proof of Mr. Breeden's entry into and compliance with a recovery monitoring contract with the Health Practitioners Monitoring Program. The motion was seconded and carried unanimously.

Kevin W. Green, C.N.A. Applicant

Ms. Francisco moved to accept the agency subordinate recommendation to deny Kevin Green's application certification as a nurse aide by endorsement. The motion was seconded and carried unanimously.

Clara Hester, R.N. Applicant

Ms. Ponn moved to accept the agency subordinate recommendation to deny Clara Hester's application for licensure as a professional nurse by endorsement. The motion was seconded and carried unanimously.

Stacey Barbour, R.M.A. Applicant

Dr. Hahn moved to accept the agency subordinate recommendation to deny Stacey Barbour's application for registration as a medication aide. The motion was seconded and carried unanimously.

Debbie Ann Harris, R.M.A. Applicant

Dr. Hahn moved to accept the agency subordinate recommendation to deny Debbie Harris's application for registration as a medication aide. The motion was seconded and carried unanimously.

Sherry A. Powers, R.M.A. Applicant

Ms. Piersall moved to accept the agency subordinate recommendation to approve Sherry Powers's application for registration as a medication aide and issue the registration contingent upon receiving evidence that Ms. Powers has entered into the Health Practitioners Monitoring Program and passed the medication aide examination. Thereafter, Ms. Powers must remain in compliance with the terms of her Health Practitioners Monitoring Program contract. The motion was seconded and carried. Ms. Cooper, Dr. Selig, Ms. Hale, Dr. Hahn, Mr Horn, Ms. Piersall, Ms. Ponn and Dr. Schultz were in favor of the motion. Ms. Jones-Clarke, Ms. Francisco and Ms. Lindsay opposed the motion.

Clarice E. Johnson, R.M.A. Applicant

Ms. Lindsay moved to accept the agency subordinate recommendation to deny Clarice Johnson's application for registration as a medication aide by examination. The motion was seconded and carried unanimously.

Daphne R. Pitt, R.M.A. Applicant

Dr. Hahn moved to accept the agency subordinate recommendation to deny Daphne Pitt's application for registration as a medication aide. The motion was seconded and carried unanimously.

Juanita Malone, R.M.A. Applicant

Ms. Lindsay moved to accept the agency subordinate recommendation to deny Juanita Malone's application for registration as a medication aide by examination. The motion was seconded and carried unanimously.

Deborah L. Robinson, C.N.A. Applicant

Ms. Lindsay moved to accept the agency subordinate recommendation to deny Deborah Robinson's application for certification as a nurse aide. The motion was seconded and carried unanimously.

As there was no additional business, the meeting was adjourned at 5:12 P.M.

Lynne Cooper, Citizen Member
President

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