

VIRGINIA BOARD OF NURSING
Disciplinary Committee
Final Agenda

Department of Health Professions – Perimeter Center
9960 Mayland Drive, Suite 300 – **Board Room 4**
Henrico, Virginia 23233

DHP Mission – the mission of the Department of Health Professions is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.

Wednesday, July 20, 2022

8:30 A.M. Disciplinary Committee Meeting – following the Business Meeting

Board Members: James Hermansen-Parker, MDN, RN, PCCN-K - **Chair**
 Jennifer Phelps, BS, LPN, QMHP-A, CSAC
 Cynthia Swineford, RN, MSN, CNE

Topics of Discussion

Consideration of the proposed education changes to **Guidance Document 90-12** (*Delegation of Authority to Board of Nursing RN Education and Discipline Staff*)*

General discussion → offering Pre-Hearing Consent Order (PHCO) for non-routine applicant cases

(* mailed 6/29) (** mailed 7/8) (***)mailed 7/13)



COMMONWEALTH of VIRGINIA

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Memo

To: Disciplinary Committee Members

From: Jay P. Douglas, MSM, RN, CSAC, FRE

Re: Guidance Document 90-12

Date: June 29, 2022

The **Guidance Document 90-12** (*Delegation of Authority to Board of Nursing RN Education and Discipline Staff*) is currently due for review.

Education Staff completed a review and made changes for consideration by the Committee.

Committee Members, please review the disciplinary section of the GD for possible updates you want to recommend to the Board.

Delegation of Authority to Board of Nursing RN Education and Discipline Staff

I. The Board of Nursing delegates to professional education staff the authority to:

- Approve nursing education programs that meet regulatory requirements as determined by a review of a nursing education program application and/or an on-site review of the program.
- Approve nursing education programs with curriculum changes that relate to decreasing the number of clinical hours across the life cycle as long as the hours meet Board regulation 18VAC90-27-100(A). [Updated the regulation, but suggest deleting for consistency]
- Approve quarterly reports from nursing education programs that meet all regulatory requirements
- Approve clinical sites that are greater than 50 miles from a nursing education program site for good cause shown
- Approve nurse aide education programs that meet regulatory requirements as determined by a review of a nurse aide education program application, an on-site review, and/or a program evaluation report
- Approve a change of location or additional locations for nurse aide education programs that meet Board of Nursing regulatory requirements
- Approve medication aide education programs that meet regulatory requirements as determined by a review of a medication aide education program application

II. The Board of Nursing delegates to professional discipline staff, and to professional education staff regarding complaints against education programs, the authority to conduct probable cause review, issue Advisory Letters, offer Prehearing Consent Orders (PHCOs) and Confidential Consent Agreements (CCAs), or close a case in select circumstances, ~~in the following circumstances:~~

- A. Probable Cause Review** – Professional discipline and education staff are delegated the authority to determine if there is probable cause to initiate proceedings or action on behalf of the Board of Nursing, including the authority to close a case if staff determines probable cause does not exist, the conduct does not rise to the level of disciplinary action by the Board, or the Board does not have jurisdiction. Additionally, staff may review a case with a Special Conference Committee for advice to determine if the case should be closed, a proceeding initiated, or an alternative disposition offered.

B. Close cases in the following circumstances:

- Insufficient evidence of a violation of law or regulation, or not rising to the level of disciplinary action by the Board
- Undetermined for reconsideration should another similar complaint be received
- Undetermined until the lapsed/suspended/revoked licensee applies to reinstate or late renew
- Undetermined for cases resulting from mandatory reports or self-reports of admission to hospitals for mental health or substance misuse issues where there is no nexus to practice

C. Advisory Letters - Professional discipline staff are delegated the authority by the Board to issue an Advisory Letter to the person who was the subject of a complaint pursuant to Va. Code § 54.1-2400.2(FG), when it is determined a disciplinary proceeding will not be instituted.

D. Initial and Reinstatement Applicants:

For initial and reinstatement applicants, professional discipline staff may offer the following where there is cause for denial of licensure/certification/registration, in lieu of instituting a proceeding:

- PHCO to approve with sanction or terms consistent with that of another state
- PHCO to approve and require Health Practitioner Monitoring Program (HPMP) participation and compliance for applicants whose only causes for denial are related to impairment issues
- PHCO to reinstate and comply with HPMP when a lapsed licensee was under a prior order to participate and comply with HPMP
- PHCO to reinstatement with same terms of probation for a probationer who allowed their license to lapse while under terms
- PHCO to Reprimand and approve, for failing to reveal a criminal conviction on a current or prior application for licensure/certification/registration (except for cases resulting in mandatory suspension)
- PHCO to Reprimand and approve, if applicant has only one misdemeanor conviction involving moral turpitude, that conviction is less than 5 years old, and the applicant has satisfied all court requirements – consistent with Guidance Document # 90-10

[Discussion needed.]

E. Disciplinary Cases: For disciplinary cases on licensees, professional discipline staff may offer the following in lieu of instituting a proceeding.

1. General PHCOs:

- PHCOs for discipline cases for all occupations regulated by the Board of Nursing for sanctions consistent with the approved Sanction Reference Worksheet Guidelines (see Guidance Document 90-7)
- PHCO to Accept Voluntary Surrender for Indefinite Suspension during any type of investigated case when licensee indicates to the investigator the desire to surrender, or individual mails in license during course of the investigation
- PHCO for similar sanction consistent with another state board of nursing action
- PHCO for similar terms/conditions (Probation or HPMP) for cases based upon action taken by another state board of nursing

2. Practice on Expired license/certificate/registration:

- PHCO for monetary penalty ranging from \$200 – \$1,000 and possible Reprimand for Nurses and Massage Therapists practicing on an expired license, consistent with Guidance Document # 90-38
- Advisory Letter or PHCO for monetary penalty ranging from \$50 - \$150 and possible Reprimand for CNAs, ~~CMTs~~, and/or RMAs practicing on expired certificates or registrations, consistent with Guidance Document # 90-61

3. Impairment

- Either a PHCO for Reprimand or a CCA (~~in lieu of scheduling an informal conference~~), depending on the facts of the case, for cases involving a positive urine drug screen on duty for a substance not prescribed to the licensee
- Either PHCO to Take No Action contingent upon entry into and/or remaining in compliance with HPMP, or offer CCA with terms (i.e. quarterly reports from treating provider) for cases resulting from mandatory reports or self-reports of admission to hospitals for mental health issues where there are no practice issues. ~~(Additionally, staff are authorized to close such cases undetermined if deemed appropriate.)~~ **[Added to IIB above]**
- PHCO to Take No Action contingent upon HPMP compliance in lieu of an IFC for disciplinary cases with ~~Health Practitioner Monitoring Program~~ (HPMP participation and no prior Board history, no prior stay granted, the licensee is compliant with HPMP contract and no issues other than impairment

- PHCO to Take No Action contingent upon continued HPMP compliance for cases with report received from PMP committee wherein stay of disciplinary action was vacated, but the individual was not dismissed from HPMP, and is now fully compliant with contract. (Include in the PHCO's findings of fact that stay was vacated.)
- PHCO to Accept Voluntary Surrender for Indefinite Suspension for cases involving HPMP participant who was ordered into the program, but is now unable to participate due to medical reasons and HPMP committee dismisses or accepts individual's resignation

4. Standard of Care

- PHCO for Reprimand for a failure to provide acceptable standard of care
- PHCO for Reprimand for abandonment of patients by licensees in a nursing home or other healthcare facility and where this is the only alleged issue
- PHCO for Reprimand based upon unprofessional conduct for allegations of verbal/physical abuse with mitigating circumstances

5. Fraud/Financial Gain Cases

- PHCO for Monetary Penalty for cases involving fraud or underlying actions/misconduct resulting in financial gain by the licensee/applicant. This may include but is not limited to: falsifying time records to indicate worked when did not; falsifying employment and licensure applications; altering expiration dates on records/certifications (ie CPR cards); falsifying work/school notes, selling medications obtained by fraud, etc. [NOTE: Staff is authorized to add a Reprimand to the Monetary Penalty in the case of egregious, intentional conduct.]
- Monetary Penalty amount imposed shall not exceed \$5,000 for each violation of law or regulation, in accordance with VA Code § 54.1-2401, and shall only be imposed if the individual is not criminally prosecuted for the violation.

~~6. Intentional Conduct Determined Abuse/Neglect~~

- ~~• PHCO for Monetary Penalty, for cases of intentional conduct determined to be abuse by a licensee and that does not rise to the level of suspension or revocation. The PHCO may also include a Reprimand and/or other terms, depending on other factors in the case.~~
- ~~• PHCO for Monetary Penalty, for cases of intentional conduct determined to be neglect by a licensee and that does not rise to the level of suspension or revocation. The PHCO may also include a Reprimand and/or other terms, depending on other factors in the case.~~

~~[NOTE: Monetary Penalty amount imposed shall not exceed \$5,000 for each violation of law or regulation, in accordance with VA Code §54.1-2401, and shall only be imposed if the individual is not criminally prosecuted for the violation.]~~

F. Education

- For disciplinary cases on education programs, professional education staff may offer a PHCO in lieu of instituting a proceeding.

G. Compliance

For cases involving noncompliance with prior board orders, professional discipline staff are authorized to do the following in the circumstances below in lieu of instituting a proceeding:

- Offer PHCOs consistent with Guidance Document # 90-35 based upon noncompliance with a prior board order.
- Have authority to modify probation orders.
- Close undetermined any noncompliance case where the licensee on probation has allowed the license to lapse (not working) ensuring that the Board of Nursing database ~~would be~~ is flagged so staff can offer PHCO with same terms as initial probation orders once the license status is changed to is being made current.
- Issue ~~Orders~~ resolution documents of successful completion of HPMP, when participation was board-ordered
- Issue ~~Orders~~ resolution documents of successful completion of probation with terms (effective November 15, 2011, consistent with the way the Board handles successful completion of board-ordered HPMP participation).

~~[NOTE: Said Orders related to HPMP and Probation completion shall be scanned onto the agency website and provide consistency to the public in Board of Nursing documentation in the future.]~~

H. Confidential Consent Agreements (CCA's):

Professional disciplinary staff are delegated authority to offer a CCA for those cases that meet the criteria in Va. Code §54.1-2400(14), which includes but is not limited to the following scenarios:

1. Impairment and/or HPMP:

- ~~Pre-employment positive drug screen without evidence it has affected practice~~

- Possible impairment without evidence that it has affected practice (i.e. coming to work with alcohol on breath & sent home; hospitalized for psychiatric or substance abuse treatment)
- HPMP participant not eligible for a stay, but with minimal practice issues

2. Standard of Care:

- Single medication error with no patient harm
- Standard of care violation “with little or no injury”
- Standard of care violation that may be in part due to systems issues
- Single incident of exceeding scope of practice – accepting assignment or agreeing to do a task without adequate training obtained or competency maintained and no patient harm
- Unintentional/inadvertent Practice Agreement violations for LNPs with Prescriptive Authority

3. Abuse / Neglect / Misappropriation / Boundary violation:

- Single boundary violation with no patient harm (~~i.e., getting involved with patient finances~~) and not resulting in criminal conviction
- Vague “rough handling” where there is no patient harm and does not rise to the level of abuse
- Inappropriate verbal response that does not rise to the level of verbal abuse (i.e., “shut up”)

4. Miscellaneous:

- CE violations for ELMTs, RMAs, LPNs, RNs, and LNPs
- Technical probation violations (i.e., late reports, etc.) that do not rise to the level of Noncompliance cited in Guidance Document 90-35
- A single misdemeanor conviction involving moral turpitude but unrelated to practice, with no other issues (ex. Worthless check; shoplifting)