

VIRGINIA BOARD OF NURSING
COMMITTEE OF THE JOINT BOARDS OF NURSING AND MEDICINE
VIRTUAL BUSINESS MEETING
MINUTES
December 9, 2020

TIME AND PLACE: The virtual meeting of the Committee of the Joint Boards of Nursing and Medicine via Webex was called to order at 9:00 A.M., December 9, 2020.

Due to COVID-19 declared state of emergency and consistent with Amendment 28 to HB29 (Budget Bill for 2018-2020) and the applicable provision of §2.2-3708.2 in the Freedom of Information Act, the Committee convened a virtual meeting to consider such regulatory and business matters as was presented on the agenda for the Committee to discharge its lawful purposes, duties, and responsibilities.

**COMMITTEE MEMBERS
PARTICIPATED**

VIRTUALLY: Louise Hershkowitz, CRNA, MSHA; Chair
Ann Tucker Gleason, PhD
Karen Ransone, MD
Lori Conklin, MD
David Archer, MD

MEMBERS ABSENT: Marie Gerardo, MS, RN, ANP-BC

**ADVISORY COMMITTEE
MEMBERS
PARTICIPATED**

VIRTUALLY: Kathleen Bailey, RN, CNM, MA, MS
Kevin E. Brigle, RN, NP
David Alan Ellington, MD
Thokozeni Lipato, MD
Stuart Mackler, MD
Janet L. Setnor, CRNA

STAFF PARTICIPATED

VIRTUALLY: Jay P. Douglas, MSM, RN, CSAC, FRE; Executive Director; Board of Nursing
Robin L. Hills, DNP, RN, WHNP; Deputy Executive Director for Advanced Practice; Board of Nursing
Stephanie Willinger; Deputy Executive Director for Licensing; Board of Nursing
Huong Vu, Executive Assistant; Board of Nursing
Sally Ragsdale, Discipline Specialist

OTHERS PARTICIPATED

VIRTUALLY: Erin Barrett, Assistant Attorney General; Board Counsel
David Brown, DO, Director; Department of Health Professions

Barbara Allison-Bryan, MD; Chief Deputy, Department of Health Professions
Elaine Yeatts, Policy Analyst; Department of Health Professions
William L. Harp, MD, Executive Director; Board of Medicine
Yetty Shobo, PhD, Deputy Executive Director; Board of Health Professions

**PUBLIC PARTICIPATED
VIRTUALLY:**

Jerry J. Gentile, Department of Planning Budget
Gerald C. (Jerry) Canaan, II, Esq. Byrne Legal Group
Ben Traynham, Hancock, Daniel & Johnson, PC
Valentina Vega, Health Policy Analyst, Medical Society of Virginia
Kassie Schroth, Virginia Association of Nurse Anesthetists
Juliane Condrey, Lobbyist, Virginia Public Access Project (VPAP)
JoAnne Collins
Scott Castro, Director of Health Policy, Medical Society of Virginia

**ESTABLISHMENT OF
A QUORUM:**

Ms. Hershkowitz called the meeting to order and established that a quorum consisting of 5 members was present.

ANNOUNCEMENT:

Ms. Hershkowitz noted the announcement as stated in the Agenda that was provided electronically:

- Lori Conklin, MD replaced Nathaniel Ray Tuck, Jr., DC
- David Archer, MD replaced Kenneth Walker, MD

Ms. Hershkowitz welcomed Drs. Conklin and Archer to the Committee of the Joint Boards. Both Drs. Conklin and Archer provided their brief background information.

There were no additional announcements.

REVIEW OF MINUTES:

Ms. Hershkowitz stated that staff provided the following document electronically:

- **A1** October 21, 2020 Business Meeting
- **A2** October 21, 2020 Formal Hearing

Ms. Hershkowitz asked if the Committee have any questions regarding the minutes. Dr. Ransone indicated that first name of Dr. Tuck was spelled incorrectly on the October 21, 2020 Business Meeting minutes. Staff will make the correction.

Dr. Ransone moved to accept the minutes as presented and amended. The motion was properly seconded. A roll call was taken and the motion carried unanimously.

PUBLIC COMMENT: Ms. Hershkowitz said that as indicated in the meeting notice on Regulatory Townhall and in the agenda package, comments will be received during this public comment period from those persons who submitted an email to Huong Vu no later than 8 am on December 9, 2020 indicating that they wish to offer comment.

Ms. Hershkowitz asked if any email requests had been received. Ms. Vu reported that no email requests for public comment were received as of 8 am today and no one is present on the call to make comment.

**DIALOGUE WITH
AGENCY DIRECTOR:**

Dr. Brown reported the following:

Staffing issues – VDH and Virginia Hospital Healthcare Association initiated a recent discussion about staffing issues that are emerging due to the surge in COVID-19 at various facilities and other states.

Emerging issues are:

- Facilities have to quarantine clinical staff
- Staff COVID-19 exposure
- Staff burn out
- Increase in retiring clinical staff during COVID-19
- Nurses are termination full-time employment in order to be hired by Staffing Agencies that offer significantly higher compensation

DHP encourages retired practitioners to join the Medical Reserved Corps (MRC). VDH will send a communication to selected licensees to recruit to the MRC soon. Also nursing and medical students are being looked at to help with the surge.

Marijuana – Virginia has an active medical marijuana program. Four pharmaceutical processors have been permitted, two of which are making the products available to patients who receive certifications from providers who are registered with the Board of Pharmacy. The big change in the last year was that the General Assembly (GA) removed the low THC potency cap on medical marijuana products in 2019.

Legislation was introduced in the upcoming GA allowing marijuana flowers to be distributed in Virginia. In addition, the Governor has endorsed Virginia moving forward with adult use of recreational marijuana.

The Secretary of Health workgroup, the Secretary of Agriculture workgroup, and the Joint Legislative Audit & Review Commission (JLARC) all agreed that medical marijuana and recreational marijuana should be regulated by the same state agency.

Dr. Allison-Bryan reported on the COVID-19 vaccines as follows:

- Two vaccines have moved from Phase Three to Active Phase for emergency use authorization and will be available within next week
- Detailed information regarding distribution of the vaccines is available in a 50-page report on the VDH website
- Healthcare workers who have immediate contact (within 6 feet) with COVID patients, workers and clients in long-term care facilities will be given the vaccines first
- CVS and Walgreen pharmacists have signed up to go into long-term care facilities to administer the vaccines (referred to as closed point distribution)

Dr. Allison-Bryan encouraged practitioners to sign up with Medical Reserved Corp to distribute the vaccines. She has done so.

Dr. Conklin expressed concern regarding absence of THC potency cap in patients undergoing anesthesiology as psychotropic drugs interact with anesthesia medications.

Dr. Brown said that he has not heard of discussion regarding a cap and added that he is aware that the Medical Advisory Committee is reviewing the science on the health effects of marijuana.

Dr. Conklin asked who do people notify about the adverse effects of the vaccine?

Dr. Allison-Bryan noted that in the trial, adverse effects were very rare. She suspected that this information will be distributed at the time of vaccine administration.

LEGISLATION/
REGULATIONS:

Ms. Hershkowitz stated that staff have provided the following documents electronically:

- **B1** Regulatory Update
- **B2** Report of the 2021 General Assembly

Ms. Hershkowitz invited Ms. Yeatts to proceed.

Ms. Yeatts reviewed the chart of Regulatory Actions as provided in the agenda. She reported that the conversion therapy legislation continues to move through the process.

Ms. Hershkowitz inquired as to how many waivers for electronic prescribing have been approved. Ms. Willinger reported that, at the last meeting, 233 waivers had been approved.

Ms. Yeatts reviewed the report of 2021 General Assembly that was provided in the agenda noting that two bills were introduced that DHP is aware of and both bills have direct impact on nurse practitioners (NP).

HB1737 (Nurse practitioners; practice without a practice agreement)

Ms. Yeatts stated that the bill reduces the requirement in the number of years of full-time clinical experience from five years to two that NPs must have to be eligible to practice without a practice agreement. Ms. Yeatts noted that the 2-year clinical practice requirement is currently in effect as an Executive Order provision due to COVID-19. Ms. Yeatts added that the impact of this bill would be an increase in the number NPs eligible to apply for the autonomous practice designation on their NP licenses.

HB1747 (Clinical nurse specialist; licensure of nurse practitioners as specialists, etc.)

Ms. Yeatts explained that this bill will allow an advance practice registered nurse who is registered by the Board of Nursing as a clinical nurse specialist (CNS) to be licensed as a NP in the category of a clinical nurse specialist with prescriptive authority and will be regulated by the Committee of the Joint Boards of Nursing and Medicine.

Dr. Conklin inquired as to the title of the CNS, is it required of CNS to take specialized testing in order to obtain the distinction or years of experience in this specialty.

Ms. Douglas replied that currently as part of eligibility for registration as a CNS, an individual has to take a national clinical nurse specialist certification examination. The educational preparation does include a pharmacology component. Ms. Douglas added that, at the national level, CNSs are not licensed as NPs and in many states CNSs have prescriptive authority and they are regulated under the sole regulation of the Boards of Nursing. She also reported that there are about 400 CNSs in Virginia and the number has been steady for many years.

Mr. Brigle asked if there has been any complaint about the reduction from five years to two years since the emergency waiver was issued. Ms. Douglas stated that she was not aware of any. Dr. Hills added that there have only been a handful of inquiries regarding the waiver.

POLICY FORUM:

Dr. Carter, Healthcare Workforce Data Center (HWDC) Executive Director, and Dr. Shobo, PhD, HWDC Deputy Executive Director

Ms. Hershkowitz said that Drs. Carter and Shobo have provided the following reports electronically:

- Virginia's Licensed Nurse Practitioner Workforce: 2020

- Virginia’s Licensed Nurse Practitioner Workforce: Comparison by Specialty

Ms. Hershkowitz stated that staff requested Committee and Advisory Members to submit questions in advance regarding the reports but none were received. Ms. Hershkowitz asked if Committee members have any questions for Dr. Shobo about the reports. None was received.

Ms. Hershkowitz said that the reports will be presented to the full Board of Nursing at its next business meeting. Ms. Hershkowitz thanked Drs. Carter and Shobo for their work.

NEW BUSINESS:

Board of Nursing Executive Director Report:

- ❖ Ms. Gerardo, the Chair of the Committee of the Joint Boards of Nursing and Medicine, was elected as Board of Nursing President at the December 2, 2020 meeting. The President’s term will begin on January 1, 2021.
- ❖ 1,070 autonomous practice designations were issued so far. The Board received some inquiries regarding workforce issues such as facilities wanting to recruit retired NPs back into the workforce with the current COVID-19 situation. There are about 2,150 NPs whose licenses have been expired within the last four years and remain expired compared to about 20,000 registered nurses whose licenses have expired. There are about five NPs in the voluntary restricted licensure category.
- ❖ Ms. Willinger has been working with NCSBN regarding uploading advanced practice registered nurse licensure and discipline data into the national database called NURSYS. The target date is planned for the end of this year to have a test file ready for uploading. This will allow states to verify NP licensure in Virginia for applicants and discipline information.
- ❖ Legislation passed last year that Ms. Douglas and Dr. Harp were involved in surveying contiguous states with the idea of pursuing reciprocity agreements. Ms. Douglas surveyed states in which Boards of Nursing regulate NPs and the report has been compiled and submitted to the General Assembly. Responses received indicate interest in participation in the NCSBN APRN compact as the avenue for ease of mobility state to state and permanent practice across state lines.
- ❖ The Board has been receiving written and phone inquiries regarding DEA number, telehealth, family NPs serving as hospitalists, and autonomous practice requirements. NPs continue to have difficulty in obtaining verification from physicians for their five years of practice under a collaborative agreement because physicians either move or retire. The Board is looking at documentation alternatives that NPs can provide.

Ms. Hershkowitz asked if any Committee or Advisory Members have any questions for Ms. Douglas.

Dr. Conklin asked how the Board can make sure that no sub-standard care will be provided by NPs who only have two years of supervision before autonomous practice can occur.

Ms. Douglas stated that, as with all professions, the quality of the program does vary but the required clinical components for advanced practice education programs do remain the same. Ms. Douglas added that the national certifying bodies assess the NP's competency through the certification examination process.

Ms. Hershkowitz was in agreement with Ms. Douglas and noted that the requirements for NP competency are being revised.

Dr. Hills reiterated that the determination of competency is through the certifying body.

Ms. Bailey said that although education changes but the requirements for certification remain the same.

Ms. Setnor noted that the requirement for certification is more rigorous. She also reminded that safety is not a concern in other states in which NPs have two or less years of experience.

C1 Revision of Guidance Document (GD) 90-11

Continued Competency Violations for Nurse Practitioners:

Ms. Hershkowitz stated that staff has provided the electronic copy of GD 90-11 and asked Dr. Hills to proceed.

Dr. Hills noted that staff are recommending editorial changes that assist with implementation.

Dr. Gleason asked if the statement about missing continuing education (CE) hours is not counted toward the current year required CE hours for renewal. Ms. Douglas replied that the standard language of the Confidential Consent Agreement (CCA) will include that statement.

Dr. Ransone moved to accept the revision of GD 90-11 as presented. The motion was properly seconded by Dr. Gleason. A roll call was taken and the motion carried unanimously.

Re-appointment of Advisory Committee Members:

Ms. Hershkowitz stated the following Advisory Committee Members are eligible for re-appointment with their first term ending in 2020:

- Mr. Kevin Brigle, RN, NP
- Mr. Mark Coles, RN, BA, MSN, NP-C
- Dr. David Ellington, MD
- Dr. Stuart Mackler, MD

Ms. Hershkowitz said that pursuant to 18VAC90-30-30(B), appointment to the advisory committee shall be for four years; members may be appointed for one additional four-year period. Ms. Hershkowitz noted that all four Advisory Members have expressed interest in re-appointment to the Advisory Committee.

Dr. Ransone moved to re-appointed all four Advisory Members as presented to the Advisory Committee. The motion was properly seconded by Dr. Conklin. A roll call was taken and the motion carried unanimously.

ENVIRONMENTAL SCAN: Ms. Hershkowitz asked for the updates from the Advisory Committee Members.

Mr. Brigle shared that the full practice authority via the autonomous practice designation has expedited the credentialing process at VCU.

Ms. Bailey shared that the Virginia Affiliate of the American College of Nurse Midwives (ACNM) has two policy issues that will be introduced to the 2021 General Assembly in an effort to improve access to healthcare, they are:

- 1 Independent practice for Certified Nurse-Midwives (CNMs) – currently in Virginia, CNMs must practice in consultation with a physician through a practice agreement. 28 states do not require this agreement. The independent practice will expand the ability of CNMs to practice in rural and underserved areas without this restrictive requirement
- 2 Licensure for Certified Midwives (CMs) – in the US, CMs have the same education as CNMs and sit for the same certification examination.

Ms. Setnor shared that several hundred CRNAs volunteered to be in the Medical Reserved Corps doing COVID testing and will stand by to help with vaccination process. Ms. Hershkowitz noted that she herself has volunteered with the Medical Reserved Corps to help out.

The Advisory Committee Members, Dr. Harp and Ms. Yeatts, left the meeting at 10:07 A.M.

RECESS:
RECONVENTION:

The Committee recessed at 10:07 A.M.
The Committee reconvened at 10:15 A.M.

AGENCY SUBORDINATE RECOMMENDATION CONSIDERATION

Renee Marie Messina Essary, LNP 0024-168282

Ms. Essary did not appear but written response was submitted.

CLOSED MEETING: Dr. Gleason moved that the Committee of the Joint Boards of Nursing and Medicine convene a closed meeting pursuant to §2.2-3711(A)(28) of the *Code of Virginia* at 10:17 A.M., for the purpose to reach a decision in the matter of Renee Marie Messina Essary. Additionally, Dr. Gleason moved that Ms. Douglas, Dr. Hills, Ms. Willinger, Ms. Vu, Ms. Ragsdale and Ms. Barrett 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 properly seconded by Dr. Ransone. A roll call was taken and the motion carried unanimously.

RECONVENTION: The Board reconvened in open session at 10:31 A.M.

Dr. Gleason moved that the Committee of the Joint Boards of Nursing and Medicine 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 properly seconded by Dr. Ransone. A roll call was taken and the motion carried unanimously.

Dr. Conklin moved that the Committee of the Joint Boards of Nursing and Medicine accept the recommended decision of the agency subordinate to reprimand Renee Marie Messina Essary. The motion was properly seconded by Dr. Ransone. A roll call was taken and the motion carried unanimously.

CONSENT ORDER CONSIDERATION

**Jennifer Renae Perry Battani, LNP Reinstatement Applicant
0024-164919**

CLOSED MEETING: Dr. Gleason moved that the Committee of the Joint Boards of Nursing and Medicine convene a closed meeting pursuant to §2.2-3711(A)(28) of the *Code of Virginia* at 10:34 A.M., for the purpose to reach a decision in the matter of Jennifer Renae Perry Battani. Additionally, Dr. Gleason moved that Ms. Douglas, Dr. Hills, Ms. Willinger, Ms. Vu, Ms. Ragsdale and Ms. Barrett 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 properly seconded by Dr. Ransone. A roll call was taken and the motion carried unanimously.

RECONVENTION: The Board reconvened in open session at 10:50 A.M.

Dr. Gleason moved that the Committee of the Joint Boards of Nursing and Medicine 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 properly seconded by Dr. Conklin. A roll call was taken and the motion carried unanimously.

Dr. Conklin moved that Committee of the Joint Boards of Nursing and Medicine to reject the consent order of Jennifer Renae Perry Battani. The motion was properly seconded by Dr. Ransone. A roll call was taken and the motion carried with four votes in favor of the motion. Dr. Gleason opposed the motion.

POSSIBLE SUMMARY SUSPENSION CONSIDERATION

James Schliessmann, Senior Assistant Attorney General, joined the meeting to present the case regarding Charmayne Lanier-Eason, LNP (cases # 194486 and 200282).

Ms. Hershkowitz asked Mr. Schliessmann to proceed with the presentation of the case.

Dr. Ransone moved to summarily suspend the license of Charmayne L. Lanier-Eason to practice as a nurse practitioner in the Commonwealth of Virginia. The motion was properly seconded by Dr. Conklin. A roll call was taken and the motion carried unanimously.

ADJOURNMENT: As there was no additional business, the meeting was adjourned at 11:02 A.M.

Jay P. Douglas, MSM, RN, CSAC, FRE
Executive Director