

VIRGINIA BOARD OF NURSING
COMMITTEE OF THE JOINT BOARDS OF NURSING AND MEDICINE
VIRTUAL BUSINESS MEETING
MINUTES
June 16, 2021

TIME AND PLACE: The virtual meeting of the Committee of the Joint Boards of Nursing and Medicine via Webex was called to order at 9:02 A.M., June 16, 2021.

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:

Marie Gerardo, MS, RN, ANP-BC; Chair
Ann Tucker Gleason, PhD
Louise Hershkowitz, CRNA, MSHA
David Archer, MD
Karen Ransone, MD

MEMBERS ABSENT:

Lori Conklin, MD

ADVISORY COMMITTEE

MEMBERS

PARTICIPATED

VIRTUALLY:

Kevin E. Brigle, RN, NP
Mark Coles, RN, BA, MSN, NP-C
David Alan Ellington, MD
Stuart Mackler, MD
Komkwuan P. Paruchabutr, DNP, FNP-BC, WHNP-BC, CNM
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

OTHERS PARTICIPATED

VIRTUALLY:

Charis Mitchell, 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
Ann Tiller, Board of Nursing Compliance Manager
Patricia Dewey, RN, BSN; Board of Nursing Case Manager
Randall Mangrum, DNP, RN; Nursing Education Program Manager

PUBLIC PARTICIPATED
VIRTUALLY:

W. Scott Johnson, Esquire/Hancock, Daniel & Johnson, PC
Ben Traynham, Hancock, Daniel & Johnson, PC
Kathy Martin, Hancock, Daniel & Johnson, PC
Clark Barrineau, Assistant Vice President of Government Affairs, Medical Society of Virginia (MSV)
Jerry J. Gentile, Department of Planning Budget (DPB)
Gerald C. (Jerry) Canaan, II, Esq. Byrne Legal Group
Julianne Condrey, VP Government and Association Relations, Aegis Association, LLC
Andrew Lamar, Lobbyist, VPAP
Kassie Schroth, Virginia Association of Nurse Anesthetists (VANA)
Richard Grossman, Virginia Council of Nurse Practitioners (VCNP)
Becky Bower-Lanier, Virginia Association of Nurse Specialists (VaCNS)
Cynthia Ward, Virginia Association of Nurse Specialists (VaCNS)
Lucy Smith
Marjorie Smith, PMHCNS
Aimee Seibert
K. Wilkinson
Mark Hickman
Kristie Burnette
Brandi Wood
Rebecca Schultz
Missy Wesolowski
18044****82
18044****65
18046****40

ESTABLISHMENT OF
A QUORUM:

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

ANNOUNCEMENT:

Ms. Gerardo noted the announcement as stated in the Agenda:
➤ Appreciation for Louise Hershkowitz' service on the Committee of the Joint Boards of Nursing and Medicine.

Ms. Gerardo recognized that Ms. Hershkowitz has served on the Board of Nursing (BON) for eight (8) years, served as BON President, and served as Chair to the Committee of the Joint Boards of Nursing and Medicine.

Ms. Gerardo also thanked Ms. Hershkowitz for incorporating the Environmental Scan as well as educational training into the agendas of the Committee of the Joint Boards and to the BON as well as for her invaluable mentorship..

Ms. Hershkowitz commented that it was an honor and privilege to serve on the BON and on the Committee of the Joint Boards.

There were no additional announcements.

REVIEW OF MINUTES: Ms. Gerardo stated that staff provided the following documents electronically:

- A1 April 21, 2021 Business Meeting
- A2 April 21, 2021 Informal Conference

Ms. Gerardo asked if the Committee had any questions regarding the minutes. None was noted.

Ms. Hershkowitz moved to accept the minutes as presented. The motion was properly seconded by Dr. Archer. A roll call was taken and the motion carried unanimously.

DIALOGUE WITH
AGENCY DIRECTOR:

Dr. Brown reported the following:
The Governor announced that the State of Emergency in Virginia due to COVID-19 will end on June 30, 2021, which means virtual meetings will also end. DHP staff have adjusted well to working remotely.

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

- 69% of adult Virginians have been vaccinated with the goal to reaching 70% by July 4, 2021. 14 states have met this 70% goal
- Almost 40% of adolescents in Virginia have been vaccinated

Ms. Gerardo inquired about the status of legislation regarding compensation for preceptors of nurse practitioner students. Dr. Brown replied that he has no updates at this time. Ms. Douglas noted that the Virginia Council of Nurse Practitioners (VCNP) and Virginia Nurses Association (VNA) will be the best resources regarding this matter.

PUBLIC COMMENT: Ms. Gerardo 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 comment request to Huong Vu no later than 8 am on June 16, 2021.

Ms. Gerardo asked if any email requests had been received. Ms. Vu reported that an email request for public comment from Marjorie Smith, Psychiatric Mental Health Clinical Nurse Specialist (PMHCNS) was received.

Ms. Gerardo instructed Ms. Smith to limit her comment to 3-5 minutes.

Ms. Smith commented that she has been practicing as a CNS since 1990 and does not prescribe. She and many CNSs are impacted by the recent law passed which requires CNSs to have a practice agreement with a physician. Ms. Smith stated that she would need to discontinue providing care to her caseload of approximately 75 at-risk patients due to this new requirement. Ms. Smith asked for correction to the bill for those CNSs who do not prescribe. Ms. Smith added that if any CNSs who need help with finding a physician, please contact Lucy Smith, who is a PMHCNS and works for the Virginia Board of Nursing.

Ms. Gerardo then offered an opportunity to anyone who did not sign up to speak and reminded everyone to limit their comments to 3-5 minutes.

Katie Page, CNM, MSM, FACNM, President of Virginia Affiliate of American College of Nurse-Midwives, thanked the Board for their work on the autonomous practice for CNMs with 1,000 hours. Ms. Page offered her expertise if the Board needs help.

In the absence of additional requests for public comment, Ms. Gerardo concluded the public comment period.

LEGISLATION/
REGULATIONS:

Ms. Gerardo stated that the following documents were provided electronically by staff:

- **B1** Chart of Regulatory Actions as of June 1, 2021
- **B2** Chart of Post-General Assembly Actions/Studies
- **B3** Regulatory Actions – Adoption of Exempt Regulations Pursuant to **2021 Legislation** Draft Regulations for Licensure of Nurse Practitioners (**Chapter 30**), and Prescriptive Authority for Nurse Practitioners (**Chapter 40**)
- **B4** Fast-Track Changes for the Licensure of Nurse Practitioners(**Chapter 30**) and the Prescriptive Authority for Nurse Practitioners (**Chapter 40**) – verbal report

Ms. Gerardo invited Ms. Yeatts to proceed.

Ms. Yeatts reviewed **B1** and **B2** which were provided in the agenda.

B3 Regulatory Actions – Adoption of Exempt Regulations Pursuant to **2021 Legislation** Draft Regulations for Licensure of Nurse Practitioners (**Chapter 30**), and Prescriptive Authority for Nurse Practitioners (**Chapter 40**)

Ms. Yeatts reviewed **HB1737** (practice of nurse practitioners without practice agreement with at least two years of full-time clinical experience

as a licensed nurse practitioner) noting that the provision of this act will be effective on July 1, 2021 and will expire on July 1, 2022.

Ms. Yeatts reviewed **HB1817** (practice of certified nurse midwives without practice agreement) noting that this provision applies to the certified nurse midwives who have completed 1,000 hours of practice as certified nurse midwives.

Dr. Parachubutr asked if the 1,000-hour requirement has to be completed in Virginia. Ms. Yeatts replied that it does not.

Dr. Ellington asked if certified nurse midwives who enter into a practice agreement are required to have autonomous practice. Ms. Yeatts responded that they must have two years of clinical practice but the law does not specify that they have the autonomous practice designation.

Ms. Yeatts reviewed **HB1747** (practice of clinical nurse specialists as licensed nurse practitioners) noting that the effective date is July 1, 2021. Changes from the registration as clinical nurse specialists to licensure as nurse practitioners in the category of clinical nurse specialists by the Boards of Medicine and Nursing and authorizes prescriptive authority. A Practice Agreement is now required for all CNSs. CNSs who desire to prescribe must apply for prescriptive authority.

Ms. Yeatts then reviewed revisions to the Regulations Governing the Licensure of Nurse Practitioners (Chapter 30) and Regulations for Prescriptive Authority for Nurse Practitioners (Chapter 40). Ms. Yeatts stated that the draft regulations are presented for Committee's consideration to recommend adoption of changes to conform to changes in the Code of Virginia.

Ms. Hershkowitz moved to recommend the adoption of the changes to Regulations Governing the Licensure of Nurse Practitioners (Chapter 30) and Regulations for Prescriptive Authority for Nurse Practitioners (Chapter 40) to conform to changes in the Code of Virginia. The motion was properly seconded by Dr. Archer. A roll call was taken and the motion carried unanimously.

B4 Fast-Track Changes for the Licensure of Nurse Practitioners(**Chapter 30**) and the Prescriptive Authority for Nurse Practitioners (**Chapter 40**) Ms. Yeatts stated that this agenda item was deferred for consideration at the upcoming business meetings of the Board of Nursing and the Board of Medicine.

Dr. Parachubutr inquired about the status of the licensed certified midwives bill (HB1953). Ms. Yeatts responded that, because it is a new category of licensure with no current regulations, it has to go through

Administrative Process Act (APA). Ms. Yeatts added that the Notice of Intended Regulatory Action (NOIRA) will be considered by Board of Nursing at its July meeting and by Board of Medicine at its August meeting.

Dr. Gleason noted her appreciation for Ms. Yeatts' expertise.

Ms. Douglas stated that with regard to Marjorie Smith's public comment referencing Lucy Smith as a contact person for clinical nurse specialists, board staff is not authorized to identify physicians who can provide consultation to clinical nurse specialists as part of the practice agreement requirement.

RECESS: The Committee recessed at 10:02 A.M.

RECONVENTION: The Committee reconvened at 10:12 A.M.

NEW BUSINESS: **C1 – 2022 Committee of the Joint Boards of Nursing and Medicine Meeting Dates:**

Ms. Douglas reviewed the 2022 Committee meeting dates noting that currently there are no rooms available for December 2022 meeting date. Staff will continue to monitor room availability and notify the Committee.

Revision of Guidance Document (GD) 90-56 – Practice Agreement Requirements for Licensed Nurse Practitioners:

Ms. Gerardo stated that the following documents have been provided:

- ❖ C2a – Current Version of GD 90-56
- ❖ C2b – Proposed Draft Version of GD 90-56
- ❖ C2c – Nurse Practitioner Side-by-Side Comparison Table (FYI)

Ms. Gerardo invited Dr. Hills to proceed.

Dr. Hills stated that she refers to this GD frequently to answer public inquiries regarding practice agreement requirements. Dr. Hills then proceeded to review the proposed changes of the GD 90-56.

Ms. Hershkowitz moved to recommend the adoption of changes to GD 90-56 as presented to the Boards of Nursing and Medicine. The motion was properly seconded by Dr. Archer. A roll call was taken and the motion carried unanimously.

Committee Members suggested posting the Nurse Practitioner Side-by-Side Comparison Table on Townhall and Nursing websites. Ms. Douglas stated that, although it is unlikely that it can be posted to Townhall, staff will explore posting options for easy public access.

C3 – Communication sent to all CNSs on May 27, 2021:

Ms. Douglas acknowledged Ms. Willinger for taking the lead on this communication and it is provided for information only.

C4 – Sentara Letter:

Ms. Douglas noted that this is provided for information only and that the response to Sentara was that the Board is not authorized to grant a waiver.

HB 793 – Preliminary Report on Nurse Practitioners with Autonomous Practice Designation – Dr. Carter, Healthcare Workforce Data Center (HWDC) Executive Director, and Rajana Siva, HWDC Data Analyst

Ms. Gerardo stated that the following were provided:

- ❖ Bate Stamped Materials from 001 to 017
- ❖ Results in Tableau online interactive map and table with dropdown menus link:
<https://public.tableau.com/profile/rajana.siva#!/vizhome/npspecialtycounts/Story1>

Ms. Gerardo invited Dr. Carter to proceed.

Ms. Douglas commented that this is related to the HB 793 (2018) requirement to collect data on traditional nurse practitioners with autonomous practice.

Dr. Carter reviewed the bate stamped materials from 001 and 017 and results in Tableau online interactive map. Dr. Carter said that she is available for questions.

Ms. Hershkowitz asked the end date of the data. Dr. Carter replied as of April 30, 2021. Ms. Douglas added that data collection for the final report will end on June 30, 2021.

Dr. Archer commented that he is happy to see that actual violations are minimal with low mean and median and that Virginia has a well maintained and competent healthcare workforce.

Mr. Brigle asked how often the online interactive map will be updated. Ms. Douglas replied that it will be discussed at DHP.

Discussion regarding *“any recommended modifications to the requirements of this act including any modifications to the clinical experience requirements for practicing without a practice agreement”* (HB 793, 2018) – **Committee Members and Advisory Committee Members**

Ms. Gerardo asked for recommendations to report from Committee Members and Advisory Committee Members.

Ms. Douglas noted that the data presented in the report related to five years clinical experience data, not two years.

Ms. Hershkowitz inquired if the similar data are available from other states. Ms. Douglas responded that there are data available but the enactment clause does not require those data.

Ms. Mitchell suggested maybe including a recommendation regarding the attestation.

After discussion, the Committee included the following recommendations to the report:

- ❖ Two-year data should be considered;
- ❖ Comparison of two years data and five years data;
- ❖ Reducing clinical experience to two years permanently or even removing time requirement completely;
- ❖ Removing restrictions (such as practice agreement, supervision and out-of-state attestation) to allow well trained and qualified nurse practitioners to practice to full scope as long as the public is not harmed;
- ❖ Recommend a parallel to CNM 2021 legislation allow experienced CNM & MD to enter into practice agreement
- ❖ Incorporating national data;
- ❖ For out-of-state nurse practitioners, the Board should consider violations or suspensions only;
- ❖ Consider internal military report which provides incidents by specialty with negative outcomes for each branch of the military
- ❖ For nurse practitioners who are seeking autonomous practice, self-attestation or using practice agreement dates should be considered; and
- ❖ Moving toward APRN Compact which requires advanced practice registered nurses to have 2,080 hours of clinical experience

Ms. Mitchell noted that recommendations should align with national requirements.

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

Mr. Brigle commented that tax break for preceptors update would be appreciated.

No additional updates were noted.

Ms. Gerardo thanked Advisory Committee members for their participation in the meeting and reminded everyone that the next meeting is scheduled for Wednesday, October 13, 2021.

The Advisory Committee Members, Dr. Brown, Dr. Allison-Bryan, Dr. Harp and Ms. Yeatts, left the meeting at 10:23 A.M.

RECESS: The Committee recessed at 11:57 A.M.

RECONVENTION: The Committee reconvened at 12:32 P.M.

CONSIDERATION OF CONSENT ORDER

Ms. Gerardo said that the Committee have one Consent Order for consideration. Copy of the Consent Order was mailed to the Committee Member in advance.

Charmayne L. Lanier-Eason, LNP

Ms. Gerardo asked if the Committee Members wishes to go into the closed meeting for discussion. None was noted.

ACTION: Ms. Hershkowitz moved to accept the consent order to indefinitely suspend the license of **Charmayne L. Lanier-Eason** to practice as a nurse practitioner in the Commonwealth of Virginia with suspension stayed upon proof of Ms. Lanier-Eason's entry into a Contract with the Virginia Health Practitioners' Monitoring Program (HPMP), compliance with all terms and conditions of the HPMP for the period specified by the HPMP, and additional terms and conditions. The motion was properly seconded by Dr. Ranson. A roll call was taken and the motion was carried unanimously.

AGENCY SUBORDINATE RECOMMENDATION CONSIDERATION

The Committee had one Agency Subordinate recommendation for consideration. Copy of the recommendation was mailed to the Committee Members in advance.

#1 – Darlene Whitfield Olive, LNP

Ms. Olive was not present to address the Committee regarding her Agency Subordinate recommendation.

CLOSED MEETING: Ms. Hershkowitz 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 12:35 P.M., for the purpose to reach a decision in the matter of Darlene Whitfield Olive's Agency

Subordinate Recommendation. Additionally, Ms. Hershkowitz moved that Ms. Douglas, Dr. Hills, Ms. Vu, and Ms. Mitchell 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 12:53 P.M.

Ms. Hershkowitz 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. Archer. A roll call was taken and the motion carried unanimously.

Ms. Olive joined the meeting at 12:53 P.M. noting that she had technical difficulties joining the Webex. Ms. Olive requested to address the Committee regarding her Agency Subordinate recommendation.

Ms. Gerardo instructed Ms. Olive that she has five minutes to address the Committee and no new information can be provided.

CLOSED MEETING: Ms. Hershkowitz 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 1:00 P.M., for the purpose to reach a decision in the matter of Darlene Whitfield Olive's Agency Subordinate Recommendation. Additionally, Ms. Hershkowitz moved that Ms. Douglas, Dr. Hills, Ms. Vu, and Ms. Mitchell 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 1:08 P.M.

Ms. Hershkowitz 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. Archer. A roll call was taken and the motion carried unanimously.

ACTION: Dr. Gleason moved to modify the recommended decision of the agency subordinate to reprimand Darlene Whitfield Olive and to require Ms.

Olive, within 90 days from the date of entry of the Order, to provide written proof satisfactory to the Committee of the Joint Boards of Nursing and Medicine of successful completion of the following NCSBN courses: *Professional Boundaries in Nursing* and *Righting a Wrong: Ethics and Professionalism in Nursing*. The motion was properly seconded by Ms. Hershkowitz. A roll call was taken and the motion carried unanimously.

ADJOURNMENT:

As there was no additional business, the meeting was adjourned at 1:11 P.M.

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

DRAFT