

**VIRGINIA BOARD OF NURSING
COMMITTEE OF THE JOINT BOARDS OF NURSING AND MEDICINE
BUSINESS MEETING MINUTES
June 7, 2017**

- TIME AND PLACE:** The meeting of the Committee of the Joint Boards of Nursing and Medicine was convened at 9:00 A.M., June 7, 2017 in Board Room 2, Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Suite 201, Henrico, Virginia.
- MEMBERS PRESENT:** Louise Hershkowitz, CRNA, MSHA; Chair
Marie Gerardo, MS, RN, ANP-BC
Lori Conklin, MD
Wayne Reynolds, DO
Kenneth Walker, MD
- MEMBERS ABSENT:** Rebecca Poston, PhD, RN, CPNP
- ADVISORY COMMITTEE MEMBERS PRESENT:**
Kevin E. Brigle, RN, NP
Mark Coles, RN, BA, MSN, NP-C
Wendy Dotson, CNM, MSN
Cathy A. Harrison, DNAP, CRNA
Stuart F. Mackler, MD
- STAFF PRESENT:** Jay P. Douglas, MSM, RN, CSAC, FRE; Executive Director; Board of Nursing
Stephanie Willinger, Deputy Executive Director; Board of Nursing
Huong Vu, Executive Assistant; Board of Nursing
- OTHERS PRESENT:** Charis Mitchell, Assistant Attorney General; Board Counsel
David Brown, DC; Director; Department of Health Professions
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
William L. Harp, MD, Executive Director; Board of Medicine
- IN THE AUDIENCE:** Tyler Cox, Medical Society of Virginia (MSV)
Michelle Satterlund, Virginia Association of Nurse Anesthetists (VANA)
Sarah Heisler, Virginia Hospital and Healthcare Association (VHHA)
- INTRODUCTIONS:** Committee members, Advisory Committee members and staff members introduced themselves.
- ESTABLISHMENT OF A QUORUM:** Ms. Hershkowitz called the meeting to order and established the quorum was present.
- REVIEW OF MINUTES:** The minutes of February 8 Business Meeting, February 8 Formal Hearing, and April 12 Business Meeting were reviewed. Dr. Reynolds moved to accept all the minutes as presented. The motion was seconded and passed unanimously.
- PUBLIC COMMENT:** There was no one present that wished to address the Board.

DIALOGUE WITH
AGENCY DIRECTOR:

Dr. Brown reported the following on the two opioid bills that were passed by the 2017 General Assembly:

- Electronic prescription of opioids will begin July 1, 2020 and the Workgroup has been established with Caroline Juran, Board of Pharmacy (BOP) Executive Director, taking the lead. The Workgroup will look at the hardship on prescribers and discuss how to implement, a date has been set for the meeting. The Workgroup includes Board of Dentistry (BOD), Board of Medicine (BOM), and Stakeholders.
- The General Assembly asked the Secretary of Health and Human Resources to convene a workgroup that includes experts to establish educational guidelines for training health care providers in the safe prescribing and appropriate use of opioids and pain management. The initial meeting was held on May 19, 2017 with representatives from UVA, VCU, Hampton University, Germanna Community College, BON, and BOM. The Workgroup plans to establish Subcommittees in the areas of pain management, recognition and treatment of addiction, and developing essential curricula. The Workgroup's goal is to interrupt pipeline of addiction at the beginning. The Workgroup also discussed plans for an online modules and to identify what needs to be in the curricula.

Dr. Reynold asked what the requirements are for electronic prescribing for Medicare patients. Dr. Brown stated that prescribers should follow Federal regulations when issuing electronic prescribing.

Dr. Reynolds asked if Dr. Brown has the breakdown of fatalities in 2016 due to heroin overdose that was requested at the February 8, 2017 meeting. Dr. Brown said that he will send the information to Ms. Douglas for distribution and noted that these figures can be found at the Office of Medical Examiner website. Dr. Brown added that death due to prescriptive drugs is stable but death due to Fentanyl has increased.

OLD BUSINESS:

Regulatory Update:

Ms. Yeatts reviewed the chart of regulatory actions, as provided in written handout.

Pain Management Emergency Regulations (Regulations Governing Prescribing of Opioids and Buprenorphine):

Ms. Yeatts stated that the emergency regulations went into effect on May 8, 2017 and will expired on November 7, 2018. Ms. Yeatts noted the following:

- The BOM Regulatory Advisory Panel (RAP) on opioid regulations met on May 15, 2017 to review the emergency regulations and to determine whether any immediate changes needed to be made. The BOM RAP received mostly comments related to intolerance of buprenorphine-naloxone products.

- The BOM Legislative Committee met on May 19, 2017 to consider the BOM RAP's recommendations which included public comment, input from the Virginia Department of Health (VDH), the Department of Medical Assistance Services (DMAS), the Department of Behavioral Health and Developmental Services (DBHDS), and Department of Health Professions (DHP). The BOM Legislation Committee considered great deal of testimonies from prescribers and patients regarding financial hardship and naloxone intolerance.
- The following recommended changes to the regulations for nurse practitioners are:
 - The term "*abuse*" is replaced with the term "*misuse*" throughout the regulations because "*misuse*" is broader and it refers to diversion.
 - It was determined that "*tramadol*" is not an opioid type of drug so it will be kept in 18VAC90-40-160(C), 18VAC90-40-190(D), and 18VAC90-40-270(D).
 - It was determined that "3%" threshold would be enough to cover naloxone intolerance in 18VAC90-40-270(A)(4)

Ms. Yeatts said the copy of the regulations for nurse practitioners with recommended changes is presented for the Committee of the Joint Boards of Nursing and Medicine for consideration and action. Ms. Yeatts added that the re-adoption of emergency regulations will be considered by the full BOM on June 22, 2017 and changes may be made. The BON will consider the regulations at its July 18, 2017 meeting.

Dr. Reynolds moved to recommend the changes made on nurse practitioner regulations for prescribing of opioids and buprenorphine to BOM and BON. The motion was seconded and passed unanimously.

Ms. Herhkowitz asked that staff providing supporting documents for changes to the emergency regulations to help informing BON in its consideration. Ms. Yeatts agreed.

Dr. Brown left the meeting at 9:45 AM.

Expert Witness:

Ms. Mitchell reported that one BOM appeal was filed in the Court of Appeal and the Court ruled BOM erred in not allowing Respondent to testify as expert witness. In light of this action, the Office of Attorney General recommends each Board at DHP adopting a standard of expert testimony. Ms. Mitchell recommended the Committee of the Joint Boards of Nursing and Medicine adopting Traditional Virginia Standard which has clear applicability.

Dr. Reynolds moved to adopt the Traditional Virginia Standard for the Committee of the Joint Boards of Nursing and Medicine expert witness testimony. The motion was seconded and passed unanimously.

Update on Board Counsel review of Statutory limitations related to proposal of eliminating prescriptive authority license:

Ms. Mitchell stated she has completed her review and found that nothing in the Code that would prohibit this action.

Ms. Douglas stated that she asked Ms. Willinger to gather the information for consideration of the Committee. She referenced Ms. Willinger's written report and noted the following:

- Administratively, this is less burdensome and less step for applicants to go through.
- Although there will be a revenue loss, this will be offset by efficiencies gained in staff process
- Once this is approved by both BON and BOM, the languages of both regulations (Regulations Governing the Licensure of Nurse Practitioners and Regulations for Prescriptive Authority for Licensed Nurse Practitioners) will be combined.

Ms. Douglas thanked Ms. Willinger for her work.

Ms. Willinger added that this is doable for the Boards and it is more efficient.

Ms. Dodson commented that she likes the hybrid license because some licensees might not like to have prescriptive authority on their licenses. Dr. Reynolds agreed with Ms. Dodson.

Dr. Reynolds moved to recommend to the BON and BOM to initiate regulatory action and move ahead in collaboration with DHP IT staff, to issue a single license for an LNP with Prescriptive Authority. The motion was seconded and passed unanimously.

NEW BUSINESS:

NOIRA for supervision and direction of laser hair removal:

Ms. Yeatts noted that the HB2119 was passed by the 2017 General Assembly and will become law as of July 1, 2017. Ms. Yeatts stated that the regulations for nurse practitioners will need to be amended to define "direction and supervision". Ms. Yeatts added that it is presented for the Committee consideration and action.

Dr. Walker asked why this legislation did not include all who use laser but just those who perform hair removal.

Dr. Harp responded that the legislation came from Constituents after adverse action from laser hair removal. Dr. Harp noted that BOM looked at this matter back in 2004 – 2005 and established a guidance document addressing equipment used solely for hair removal. Dr. Harp added that the FDA requires that company can only sell the device to practitioner who has valid license in the state that they practice. Dr. Harp commented that hair removal is not the practice of medicine.

Ms. Gerardo moved to recommend to BON and BOM a NOIRA to implement HB2119 in 18VAC85-20, 18VAC85-50 and 18VAC90-30. The motion was seconded and passed unanimously.

Adoption of Guidance Document on the Telemedicine for Nurse Practitioners:

Ms. Yeatts said that with the 2017 amendments to Section 54.1-3303 affecting tele-prescribing, the Guidance Document on Telemedicine needs to be revised. Ms. Yeatts added that practitioners can prescribe any schedules as long as prescribing meets federal regulations and Virginia Code §54.1-3303.

Ms. Gerardo moved to recommend to the BON and BOM adoption of the guidance document as presented and amended.

One time reduced renewal fee:

Ms. Yeatts stated that this item was not on the agenda but she wanted to remind the Committee that temporary fee reductions apply only during the expiration dates, July 31, 2017 – June 30, 2019, for licensed nurse practitioners and licensed nurse practitioners with prescriptive authorities. Ms. Douglas added that it is a 25% reduction.

Ms. Yeatts left the meeting at 10:18 AM.

RECESS: The Committee recessed at 10:18 AM

RECONVENTION: The Committee reconvened at 10:31 AM

Appointment of Joint Boards Advisory Committee Member, Dr. Thokozeni Lipato:

Ms. Hershkowitz stated that Dr. Lipato's VC is presented for the Committee consideration and action for the physician position on the Advisory Committee to replace Dr. Borzelleca.

Dr. Walker moved to accept the appointment of Dr. Lipato for the physician position on the Advisory Committee. The motion was seconded and passed.

Board of Nursing Executive Director Report:

Ms. Douglas reported the followings:

- BON has been receiving an increase of calls regarding Pain Management regulations
- Prescription Monitoring Program (PMP) report was sent to licensees who have registered with PMP.
- PMP Prescriber report was also sent to licensees by e-mail which provides snapshot for prescribing. Ms. Hershkowitz asked if the basis for comparison is included in the report. Ms. Douglas replied yes. Ms. Gerardo added that the report shows similar prescribing among licensees.

- Providers' Clinical Support System for Medication Assisted Treatment (PCSS-MAT) has launched its free 24-hour course specifically developed for nurse practitioners and physician assistants to treat opioid use disorder.
- The Deputy Executive Director position was approved to post until June 14, 2017. This position requires someone who holds a license as a nurse practitioner, serves as Agency Subordinate, and reports to Ms. Douglas and Senior Deputy.

“Chronic Pain Case Study” presentation by Dr. Cathy A. Harrison, DNAP, MSN, CRNA:

Dr. Harrison thanked the Committee for allowing her to explain the case studies that was completed by Virginia Action Coalition/Access to Care Workgroup and The Virginia Action Coalition is co-chaired by Virginia Nurses Association (VNA) and AARP.

Dr. Harrison stated that the Workgroup wanted to be proactive in informing practitioners and the public about alternative approaches to pain management without the use of narcotics. Dr. Harrison summarized the findings of different case studies such as Cesarean Section Pain Management, Dental Procedures, Fibromyalgia, Back Pain. Dr. Harrison added that there is a 20-minute script available with the slides.

Dr. Walker commented that the studies were well done. Dr. Conklin suggested to make it available through school nurses in middle school. Dr. Harp and Ms. Douglas commented that the information will be passed on to Dr. Brown with the goal of making Dr. Hazel and the Workgroup on Opioids aware. Dr. Mackler suggested the presentation to be CME accredited.

Ms. Hershkowitz thanked Dr. Harrison and asked the Committee members to refer the distribution list to Dr. Harrison. Ms. Hershkowitz also asked Dr. Harrison to forward the script to Ms. Douglas for distribution.

Members of the Advisory Committee and Ms. Douglas left the meeting at 11:04 AM.

RECOMMENDATIONS FOR CONSIDERATION

CLOSED MEETING: Ms. Gerardo moved that the Committee of the Joint Boards of Nursing and Medicine and the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 11:04 A.M. for the purpose of deliberation to consider Agency Subordinate recommendations. Additionally, Ms. Gerardo moved that Ms. Willinger, 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 seconded and carried unanimously.

RECONVENTION: The Board reconvened in open session at 11:26 P.M.

Ms. Gerardo moved that the Committee of the Joint Boards of Nursing and Medicine and 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.

Karen Diane Beatty, LNP 0024-16880 and Authorization to Prescribe 0017-139805

Dr. Reynolds moved to reject the Agency Subordinate recommendation and refer this matter to a formal hearing. The motion was seconded and carried unanimously.

Jason A. Panek, LNP 0024-172801

Ms. Gerardo moved to o reject the Agency Subordinate recommendation and refer this matter to a formal hearing. The motion was seconded and carried unanimously.

Ms. Hershkowitz reminded available Board Members that assistance was needed with probable cause review following the meeting.

Ms. Hershkowitz left the meeting at 11:26 AM.

CONSIDERATION OF CONSENT ORDER

CLOSED MEETING: Dr. Walker moved that the Committee of the Joint Boards of Nursing and Medicine and the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 11:27 A.M. for the purpose of deliberation to consider of Consent Order. Additionally, Ms. Gerardo moved that Ms. Willinger, 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 seconded and carried unanimously.

RECONVENTION: The Board reconvened in open session at 11:32 P.M.

Ms. Gerardo moved that the Committee of the Joint Boards of Nursing and Medicine and 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.

Paul Howard Werbin, LNP 0024-090514

Dr. Reynolds moved to accept the consent order of indefinite suspension of the license of Paul Howard Werbin to practice as a nurse practitioner in the

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Commonwealth of Virginia. The suspension shall be stayed upon proof of Mr. Werbin's entry into the Virginia Health Practitioners' Monitoring Program (HPMP) and remaining in compliance with all terms and conditions of the HPMP for the period specified by the HPMP. The motion was seconded and passed unanimously.

ADJOURNMENT:

As there was no additional business, the meeting was adjourned at 11:32 A.M.

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