



OHIO BOARD OF NURSING

MINUTES OF MEETING

BOARD RETREAT – APRIL 16-17, 2015

The Ohio Board of Nursing Retreat was held on April 16-17, 2015 at the Drury Inn, 6170 Parkcenter Circle, Dublin, Ohio. The President, Vice-President, and Executive Director reviewed the agenda prior to the meeting.

On Thursday, April 16, at 9:02 a.m., President Maryam Lyon called the meeting to order. On Friday, April 17, at 9:00 a.m., President Maryam Lyon called the meeting to order.

BOARD MEMBERS

Maryam Lyon, RN, President
Janet Arwood, LPN, Vice-President
Brenda Boggs, LPN (Absent Thursday and Friday)
Judith Church, RN
Nancy Fellows, RN (Absent Friday)
Lisa Klenke, RN (Absent Thursday and Friday)
Lauralee Krabill, RN
J. Jane McFee, LPN
Sandra Ranck, RN
John Schmidt, RN
Patricia Sharpnack, RN
Sheryl Warner, Consumer Member

Unless noted in these minutes as exhibits, all written reports submitted to the Board are maintained in the Board office according to the Board record retention schedule.

WELCOME AND ANNOUNCEMENTS

Board President Maryam Lyon welcomed the attendees. Board members and staff introduced themselves. Vice-President Janet Arwood read the Board mission.

LEGISLATIVE DISCUSSION

Board Legislative Proposals

Tom Dilling reviewed the legislative proposals as drafted by the Legislative Services Commission (LSC). The Board discussed additional revisions to Sections 4723.18; 4723.19; and 4723.35, ORC. The Board agreed by general consensus for Board staff to work with the bill sponsor to incorporate these revisions.

LPN IV Therapy/Statute

Lisa Emrich reviewed the Nurse Practice Act (NPA) and the administrative rules regarding LPN intravenous (IV) therapy. The current provisions in the NPA were enacted in the early 1990s. The revisions to date have been to re-organize the law content for clarity and to remove two prohibitions so that LPNs are now authorized to aspirate IV lines and administer antibiotics through a central line.

The Board considered that to meet future health care needs, the IOM *Future of Nursing Report* encourages that nurses, including LPNs, practice to the fullest extent possible as authorized by their licensed scope of practice. Through Board Committees on Practice, questions have arisen about LPNs being limited in performing IV therapy procedures. The Board agreed by general consensus to the following:

- Remove the detailed IV practice/procedures from statute, and place the practice/procedures in the administrative rules.
- For clarity, specify in statute that LPNs are authorized to perform hemodialysis in a home setting, as it is specified for Ohio Certified Dialysis Technicians.
- Propose that Chapter 4723-17, OAC, include the following:
 1. The following IV therapy procedures would be permissible for central and peripheral venous access devices:
 - a. Calculating and adjust IV infusion flow rate, including monitoring and discontinuing infusions
 - b. Drawing blood
 - c. Monitoring access site and performing site care and maintenance
 - d. Changing infusion tubing and devices
 - e. Performing intermittent flushes for line patency maintenance
 - f. Converting a continuous infusion to an intermittent infusion
 - g. Initiating and administering IV medications and fluids only as prepared, labeled and dispensed by a pharmacist
 - h. Assuming the monitoring of the administration of blood or blood components, after the registered nurse has initiated and monitored the patient for fifteen minutes
 - i. Discontinuing the infusion of blood or blood components
 - j. Programming, setting, and monitoring the functions of automated infusion pumps
 - k. Administering the following classifications of medications:
 - i. Analgesics
 - ii. Analgesic antagonists

- iii. Antiemetics
 - iv. Anxiolytics
 - v. Corticosteroids
 - vi. Diuretics
 - vii. Glucose
 - viii. Standard flush solutions
 - ix. Antibiotics and anti-infective medications
2. The following IV therapy procedures would be prohibited:
- a. Initiating blood or blood components or any item obtained from the blood bank
 - b. Accessing or programming an implanted IV infusion pump
 - c. Inserting or removing any IV access device placed for central venous administration
 - d. Administering any of the following IV medications or IV fluids:
 - i. Oxytocics
 - ii. Antineoplastic and chemotherapy drugs
 - iii. Investigational and experimental drugs
 - iv. Colloid therapy, e.g., albumin and similar types of volume expanders
 - v. Hyperosmolar solutions
 - vi. Thrombolytic or fibrinolytic agents
 - vii. Tissue plasminogen activators
 - viii. Immunoglobulins
 - ix. Medications for purposes of procedural sedation
 - x. Medications requiring titration

The Board asked that staff conduct additional research regarding: (1) programming, setting, and monitoring the functions of patient controlled analgesia infusion pumps; and (2) administering, monitoring, and discontinuing parenteral nutrition, fat emulsion solutions.

Board staff will draft the proposed revisions for further consideration of the Board, discussions with interested parties, and public input through Board Committees on Practice.

Medicaid–Waiver Provisions of HB 64

The Board reviewed the provisions of HB 64 regarding assistive personnel in Medicaid-waiver programs. T. Dilling reported that these provisions have been removed by the House and may be introduced in a stand-alone bill to allow for additional review and discussion by interested parties.

APRN Modernization Act

Nursing associations are working to identify sponsors to introduce legislation that

will impact APRN practice and prescribing. T. Dilling provided an outline of the proposed legislative provisions.

Governor's Cabinet Opiate Action Team (GCOAT)

T. Dilling discussed the work of GCOAT's Opioid and Other Controlled Substance Committee, including the proposed definition of acute pain.

ADMINISTRATIVE RULE REVIEW – 2015

H. Fischer provided an overview of the 2015 rule chapters the Board is required to review at least once every five years. She also identified proposed revisions to individual rules that are not slated for five-year review, but are either required to be revised, or recommended to be updated, due to recent legislative action, or for technical reasons. The Board discussed possible rule amendments and new rules. The administrative rules will be reviewed at the May Board meeting, and the interested party meeting is scheduled for May 27, 2015.

The Board discussed whether to adopt rules to establish minimum education requirements for APRNs to assess and clear students to return to practice/competition following a concussion. Students may be assessed/cleared by a non-physician licensed healthcare professional effective September 17, 2015, without school or youth organization authorization, if the professional has met the education requirements specified in rule. The Board agreed by general consensus to expedite rules to enable APRNs to assess/clear student athletes by September 17. The Board will hold a separate rule hearing in July for this purpose, in addition to the November rule hearing.

STRATEGIC PLAN

Betsy Houchen presented the Strategic Plan. The Board reviewed the objectives and outcome measures, and agreed upon revisions. The revised Strategic Plan will be on the May Board agenda for approval.

The Board agreed by general consensus that Patricia Sharpnack will serve as a Board representative to the Ohio Action Coalition Steering Committee.

COMPACT STATEMENT/NEW COMPACT

New Compact Proposal

B. Houchen discussed participation in the NCSBN meetings that were convened to discuss the future of the Compact in an attempt to find common ground so all NCSBN member boards could work together for a new model. The Compact states determined it would be best to modify the current Compact rather than establish another licensure model. The "new Compact" was discussed at the NCSBN 2015 Midyear Meeting. A special Delegate Assembly will convene on May 4, 2015 to vote on the new Compact. The Board expressed concern about the following:

- Nurses who currently have multi-state licenses under the old Compact would be grandfathered into the new Compact. Therefore, nurses who never had criminal records checks could hold a multi-state license under the new Compact.
- The Ohio Nurse Practice Act includes absolute bars for licensure, and the new compact does not. The following list of crimes make an individual ineligible for licensure in Ohio, or if already licensed, require an automatic suspension of licensure: aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, and aggravated burglary, as defined under Title XXIX [29] of the Ohio Revised Code, or, with regard to offenses committed in other jurisdictions, offenses comparable to the offenses defined in Title XXIX [29] of the Revised Code.
- At the Midyear Meeting it was presented that because of the Compact, states can share investigative information with other states. The Board noted that the Board, without being a Compact member, has authority under the Ohio NPA to share investigative information with other boards of nursing.
- At the Midyear meeting, it was explained that if the home state takes a disciplinary action against a nurse, that action prevents the nurse from practicing in the remote states and the nurse is issued a single state license. However, if a remote state takes disciplinary action, the discipline is only effective in the remote state that took the action, so the nurse could continue to hold a multi-state license and practice in other Compact states. It was suggested that remote states would check Nursys to determine if other remote states have taken disciplinary actions and then could bootstrap the action taken in the other remote state. However, if the remote state does not know the nurse is practicing in their state, it is not clear how the remote state would know to check the individual nurse's license/discipline in Nursys.
- Mandatory reporting is not a requirement in the new Compact. The TERCAP data has shown the importance of mandatory reporting to assure boards of nursing are receiving complaints and preventing unsafe practitioners from moving from employer to employer without boards of nursing knowing about the unsafe practice. Ohio is a mandatory reporting state.
- Each State will make its own case-by-case determination about whether to impose discipline for misdemeanors. If the state takes action on a misdemeanor, other party states could take action based on the other

State's action, but if the State where the misdemeanor occurred declines to take action, the Board would not be aware of the misdemeanor.

- Not all Boards know when nurses are participating in their State's Alternative Program (AP) because, for example, the program is outsourced to a third party. If States do not know their AP participants, those licensees would be able to retain multi-state licenses if the licensee did not report their participation to the State.
- The new Compact language, "not been convicted or found guilty, or has entered into an agreed disposition" is too narrow. Under Ohio law, the Board can also take action on judicial findings of eligibility for a pretrial diversion or similar program, or intervention in lieu of conviction. Without these options, the Board would need to base action on the underlying facts which would greatly lengthen the investigative and hearing processes.
- At the NCSBN Midyear Meeting it was presented that the Compact is needed to assure an adequate nursing workforce during disasters. However, the Board noted that single state licensure could also effectively address disaster situations. Ohio's NPA includes an exemption so that nurses licensed in other states can enter Ohio in case of a declared disaster.
- The new Compact language specifies that an applicant for a multi-state license would be required to have a social security number. This is not consistent with Ohio law or federal law.
- The new Compact language states that home states can "deactivate" or "convert" licenses in accordance with applicable rules adopted by the Commission." Ohio could not "convert" or "deactivate" a license without affording the licensee due process.
- Each member of the Compact, regardless of the number of licenses regulated, or the amount of fees paid to the Commission, is represented by one person and has one vote. The Commission will have the power to enact rules that are binding on each State in the Compact by a simple majority vote. Each State would be subject to administrative rules not passed at the State level. If there is a dispute between Ohio and the Commission or another party state, the matter will be handled in the Illinois court system. The Commission is not subject to any independent auditor or legal authority with oversight over its operations or finances, and has immunity/indemnification from lawsuits.

- The Commission is to be fully staffed and all of its costs will be paid for by annual assessments on members; the Commission would have exclusive say in how much each member is assessed. Currently there is a \$6,000 annual fee for Compact membership. The fiscal impact will vary from state to state. Ohio would need to conduct a fiscal analysis to determine the impact on loss of licensure fee revenues.

The Board agreed by general consensus to vote “no” regarding the passage of the new Compact at the special Delegate Assembly.

Board members discussed that while Compact licensure may be advantageous for the mobility of nurses, the Board continues to believe that potential risks of harm to the public outweigh the potential benefits. The Board agreed by general consensus to re-affirm the Board statement on Multi-State Nurse Licensure as presented.

NEGP 2016-2017 GRANT CYCLE

Lisa Emrich reviewed the NEGP 2016-2017 grant cycle processes. Sandra Ranck, John Schmidt, and Sheryl Warner volunteered to review NEGP proposals.

COMPLIANCE PROGRAM

Compliance Protocols

Lisa Ferguson-Ramos reviewed the Disciplinary Complaint Protocol, Discipline Priorities and Guidelines Protocol, and Settlement Conference Protocol and discussed the proposed revisions.

Consent Agreement Protocol.

Holly Fischer reviewed the Board staff policy, Consent Agreement Protocol, and its implementation.

Bootstrapping Violations

H. Fischer discussed “bootstrapping” violations based on Section 4723.28(B)(1), ORC. The Board members stated that it is important for the Board to have the ability to bootstrap disciplinary actions taken by other states or regulatory bodies in order for the Board to review the underlying facts and determine if Board action is needed. The Board noted there have been cases where another state board of nursing issued a cease and desist (reprimand) letter even for serious violation(s). The Board agreed that by having authority to bootstrap all actions, the Board then is able to review underlying facts of each case and may or may not take action. Without the ability to bootstrap, the Board would not be aware of the underlying facts. The Board agreed by general consensus to propose an amendment to the NPA that provides clearer authority for the Board to bootstrap all disciplinary actions taken by other states or regulatory bodies.

Hearing Cases

H. Fischer explained options when the Board receives a Report and Recommendation where the Hearing Examiner recommends dismissal of facts or a legal citation. For example, dismissals may be recommended because no evidence was presented to substantiate the violation, i.e., a witness was not called or evidence not presented. In these cases, the Board may choose to remand the case for additional evidence or testimony.

Appearances

The Board agreed by general consensus to amend the administrative rules to allow that those appearing before the Board have a total of no more than seven minutes for their appearance. The Board stated they prefer that all those who request to appear before the Board be instructed to be present at an established time for each meeting. By being present at an established time, all those making appearances will be in attendance when called upon and delays in the meeting will be avoided.

Quasi-Judicial Worksheet

L. Ferguson-Ramos reviewed the Quasi-Judicial Worksheets. The Board agreed by general consensus to use the updated worksheets and to complete them electronically.

Alternative Program for Chemical Dependency Audit

L. Ferguson-Ramos and Board staff Susan Mann-Orahood provided an overview of the Alternative Program for Chemical Dependency (AP) for the Board's review and audit.

Media Articles and Reports

B. Houchen reviewed media articles and other reports regarding other state boards of nursing. These are reviewed to show the importance of addressing complaints and disciplinary cases in a timely manner, which has always been a priority for the Board.

Mental Health Questions on Application

The Board discussed questions on the Board's license application related to mental health diagnosis and treatment; Title II of the Americans with Disabilities Act; and a letter issued by the U.S. Department of Justice (USDOJ), with respect to the licensure process for attorneys in the state of Louisiana. In June 2014, the Board requested an updated legal review of its license application questions from its Assistant Attorney General, and then formally, from the Ohio Attorney General's Office (AGO). In November 2014, the AGO declined to address the issue and advised the Board to follow the legal advice provided by the Board's Assistant Attorney General. The Board responded to the inquiries of ONA and Disability Rights Ohio based the informal legal advice of its AAG regarding this matter.

Marijuana Discussion

H. Fischer reviewed the pertinent laws related to the use of marijuana by licensees. Section 4723.28(B)(8), ORC, authorizes the Board to discipline a licensee for self-administering or otherwise taking into the body any dangerous drug, as defined in Section 4729.01, ORC, in any way not in accordance with a legal, valid prescription issued for that individual, or self-administering or otherwise taking into the body any drug that is a schedule I controlled substance. Marijuana is listed as Schedule I under the Controlled Substances Act for purposes of federal law. Marijuana is listed in Ohio as a schedule I. Thus, even if marijuana is prescribed or obtained legally, unless federal and Ohio law change, it remains schedule I, and testing positive for marijuana remains a violation of Section 4723.28(B)(8), ORC. Section 4723.28(B)(10), ORC, authorizes the Board to discipline a licensee for impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of the use of drugs, alcohol, or other chemical substances. Section 4723.28(B)(10), ORC, does not depend on whether or not marijuana was legally obtained, however, "impairment" must be shown. Thus, even if marijuana were to be legalized in Ohio and/or legally obtained, observed impairment on the job will always be a basis for disciplinary action as is the case with alcohol impairment.

BOARD POLICIES AND GOVERNANCE

Board Policy B-10 Compensation

Action:

It was moved by J. Jane McFee, seconded by Patricia Sharpnack that the Board revise Board Policy B-10 to state that Board members appointed or re-appointed after April 17, 2015, be compensated for a maximum of twenty hours of preparation time.

Schedule for Board Meetings

The Board discussed scheduling meetings on a Wednesday and Thursday to allow for a Friday workday and decrease or eliminate staff weekend work to prepare Orders for mailing and to update credential records to timely reflect actions taken by the Board. The Board agreed by general consensus to adopt this schedule starting in 2016.

Executive Director Report

The Board reviewed a sample of a re-formatted Executive Director's Report and agreed with the re-formatting and information to be included.

Board Centennial

This year the Board celebrates 100 years of nursing regulation. The Board will include historical information about the Board in the Summer issue of *Momentum*, be recognized by NCSBN at the Annual Meeting in August, and request a Governor's Resolution.

Momentum

The Board reviewed a board of nursing newsletter that features Board members, and agreed to feature Board members in future *Momentum* publications.

Board Discussions

Board members discussed the importance of respectful discussions for all topics under the consideration by the Board.

Hotel Plans for 2016 Retreat

Board members agreed to return to the Drury Inn for the 2016 Board Retreat.

Joint Regulatory Statement Regarding the Use of Protocols to Initiate or Adjust Medications

The Board reviewed the revised *Joint Regulatory Statement Regarding the Use of Protocols to Initiate or Adjust Medications*. In May of 2014 the Ohio Board of Pharmacy amended administrative Rule 4729-5-01(L)(3) and (4), OAC, to allow for the administration of Vitamin K and erythromycin ointment to a newborn according to a protocol. The Board agreed by general consensus to adopt the revised Joint Regulatory Statement that reflects the rule change.

ETHICS TRAINING

H. Fischer provided ethics training for Board members and staff. Those in attendance fulfilled the Governor's requirement for annual instruction on Ohio's Ethics Laws, in accordance with Executive Order 2011-03K.

SCHEDULE II TRAINING

L. Emrich provided Schedule II training for Board members and staff. The training was approved as Category A continuing education for the nurses in attendance.

EVALUATION OF RETREAT AND ADJOURNMENT

The meeting adjourned on Thursday, April 16, 2015 at 3:15 p.m. and on Friday, April 17, 2015 at 2:15 p.m.

Maryam Lyon, MSN, RN
President



Attest:

Betsy Houchen, RN, MS, JD
Executive Director

