



OHIO BOARD OF NURSING
MINUTES OF MEETING

BOARD RETREAT – APRIL 14-15, 2008

The Ohio Board of Nursing Retreat was held on April 14-15, 2008 at the Drury Inn at 6170 Parkcenter Circle, Dublin. The President, Vice-President, and Executive Director reviewed the agenda prior to the meeting.

On Monday, April 14, at 9:00 a.m., President Lisa Klenke called the Board meeting to order. On Tuesday, April 15, at 8:05 a.m., President Lisa Klenke called the meeting to order.

BOARD MEMBERS

Lisa Klenke, MBA, RN, CNA-A, President
J. Jane McFee, LPN, Vice-President
Anne Barnett, BSN, RNC, CWS
Janet L. Boeckman, RN, DNP, CPNP
Elizabeth Buschmann, LPN
Debra Broadnax, MSN, RN, CNS, Supervising Member, Disciplinary Matters
Patricia Burns, LPN
Kathleen Driscoll, JD, MS, RN
Delphenia Gilbert, BA, RN, M.Ed., LSN
Kathleen O'Dell, RN, M.Ed., NCSN
Eric Yoon, MSN, ACNP, CCNS

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

President Lisa Klenke welcomed Board members and staff.

BOARD PROCESSES

Board Governance Survey Results

L. Klenke presented the 2008 results and noted the marked improvement from 2006 to 2007 and again in 2008. The Board members agreed. L. Klenke stated that one comment on the survey was that there be a second consumer member on the Board. K. O'Dell stated she believes that a second consumer member would be advantageous and the terms of two consumer members

could be staggered, so the Board would not be without a consumer member if Board appointments are delayed. The Board stated they understand that adding a second consumer member would require a statutory change.

L. Klenke discussed other survey comments regarding the Board's appointment of Chairpersons for Advisory Groups and the suggestion to rotate Advisory Group chairs. J. Jane McFee stated she believes the rotation should be every two years, to allow time for Board members to learn the processes of the respective Advisory Group. J. Boeckman added that she believes Board members currently receive the opportunity to serve on groups that interest them.

Board Appointments – Questionnaire

The Board received the questionnaire required by the Governor's office for those interested in Board appointments or reappointments. The form is also available through the Governor's Boards and Commissions web page.

Momentum

The Board reviewed the 2008 *Momentum* schedule. J. Jane McFee asked that information regarding the new renewal process continue to be included in *Momentum* and that it also be targeted for RNs to notify them about the change for the 2009 RN renewal process.

Board Committee on Practice/Interpretive Guidelines

L. Klenke asked for Board and staff comments about the usefulness of convening the Board Committees on Practice and the development of Interpretive Guidelines. L. Emrich stated that the Interpretive Guidelines have been valuable as a means to address issues and questions asked by licensees contacting the Board or when Board staff identify issues. A discussion was held about the purpose of the Interpretive Guidelines and that the Board is not establishing new rules or policies, but amplifying the administrative rules through the Interpretive Guidelines. L. Ferguson-Ramos stated that the Interpretive Guidelines have been very helpful for the Board investigators, and have increased communications between staff in the Practice and Compliance areas.

Table of Organization

The Board reviewed the updated table of organization and B. Houchen reported on the state hiring freeze and the Board's vacant positions.

COMPLIANCE

Review of Protocols

L. Ferguson-Ramos reviewed the Compliance protocols and discussed proposed modifications. Staff discussed the impact of requiring that there be

a minimum of ninety days of clean drug screens prior to practice for a positive cocaine drug screen. The Board discussed returning to a probationary agreement so that Board staff would be able to negotiate an agreement and the licensee would be under Board monitoring sooner. The Board agreed by general consensus to this revision with the provision that the licensee will be subject to increased frequency of drug screens.

The Board discussed licensees and certificate holders working on lapsed licenses. E. Yoon stated that he is concerned with any lapse of the certificate to prescribe (CTP). D. Broadnax stated she believes it is also serious for an RN's license to lapse because an RN is administering potentially dangerous medications. K. Driscoll stated she views a lapse in the certificate of authority the same as a lapse in the CTP. E. Buschmann stated she does not believe it is the responsibility of the Board to remind APNs of deadlines and when they should renew their national or state certification or CTP. D. Broadnax stated she was concerned that there would be a tremendous increase in the workload if the lapsed license/certificate cases that currently receive Advisory Letters would go through the disciplinary process. She stated it could also result in a significant increase in costs due to the number of hearings that could be required. H. Fischer said that one option may be to issue an automatic fine, and this would require an amendment to the statute. The Board asked staff to obtain more information about issuing fines for lapsed licenses/certificates from other states and regulatory boards.

The Board expressed concerns about non-compliant licensees receiving a second or third consent agreement. The Board discussed lack of compliance with drug screens and whether cost is a factor. Emily Brown stated that a few years ago the Board negotiated a lower drug screen cost and FirstLab provides "scholarships" for indigent cases. H. Fischer stated that in most cases, ultimately the Board's choice is to enter into an additional Consent Agreement, or pursue revocation of the license or certificate. E. Yoon stated that he supported increasing the absolute bars to licensure to provide a clear line of what is not acceptable.

L. Ferguson-Ramos stated that Julia Hilty, staff attorney, is compiling data from the No Request for Hearing cases. It was suggested that the consent agreement templates be provided to the Board members again for review. H. Fischer and T. Bowman volunteered to provide continuing education to the Board at the July Board meeting based on case scenarios and the process of evaluating cases based on the facts, evidence, and mitigating or aggravating factors.

Alternative Program

E. Brown reviewed the Alternative Program (Program) materials and provided a history of the Program. The Program started in 1995 and licensees were

encouraged to participate in lieu of discipline. In 2002, the application process was revised and cases were reviewed with the Board Supervising Member for Disciplinary Matters to determine eligibility for the Program. In 2004, the Board amended the administrative rules governing the Program. These amendments established more definitive eligibility and ineligibility criteria. In 2007, the Program moved to the Compliance Unit and a new database was created.

E. Brown reviewed data and statistics for the Program. It was noted that in the early years the program appeared to operate more as a peer support or advocacy program, but the Board has made numerous changes to the Program designed to better protect the public while still maintaining the Program as an alternative to discipline.

No Request for Hearing Cases: Protocol and Process

H. Fischer and Tara Bowman provided a review of the disciplinary processes and the protocol for the No Request for Hearing cases and answered questions. Over 4,000 complaints were received in 2007. Cases are assigned to an investigator who reviews records, interviews witnesses, and submits a report to a staff attorney. The staff attorney reviews the case file and provides a summary for the Board Supervising Member for Discipline for case review. Case review occurs every other week, with over 100 cases reviewed each time.

A Notice is issued in accordance with Board approved protocols or the direction of the Supervising Member. If individuals do not request a hearing, the Board is required to process the cases according to case law established by the *Goldman* case. In a 1996 Medical Board case, Dr. Goldman appealed an Order of the Medical Board arguing that the Order was issued without proper adjudication. After that case, the Nurse Practice Act was amended to authorize the Board to review the evidence in the cases in which no hearing was requested, and issue Board Orders without a full evidentiary hearing in these cases.

Based on the *Goldman* case, the Board receives an affidavit showing the evidence of the case. Under Section 119.12, ORC, Board Orders must be based on reliable, probative, and substantial (RPS) evidence. Board Orders may be appealed, to the Franklin County Court of Common Pleas but new evidence generally cannot be entered at the time of appeal. The court must uphold the Order unless the Order was not set forth in accordance with the law, or it was not based on RPS evidence. Once the Common Pleas Court rules, the case may be appealed to the Tenth District Court of Appeals whose scope of review is even more limited to "abuse of discretion." The last step in the appeals process would be to the Ohio Supreme Court.

L. Ferguson-Ramos and the Board thanked J. Hilty for her work in preparing the No Request for Hearing cases for the Board. When J. Hilty started she received over 100 cases from the Assistant Attorney General and currently there is no backlog.

Compliance Materials on Disk

The Board agreed to have the No Requests for Hearing cases sent on optical disk to save paper and staff time. D. Gilbert requested to continue to receive hardcopies since she is a new member. Board members agreed that they would continue to receive hardcopies of the Report and Recommendation cases.

JUST CULTURE

L. Emrich attended a seminar in October 2007 on “Just Culture” and provided an overview. L. Klenke stated she believes it is important that an environment be created where health care workers can come forward when they make mistakes. She said that initially the patient safety movement was described as “blame free,” but it is no longer viewed this way. Just Culture is a system that holds the individual accountable for at-risk or negligent behavior but if the incident occurred due to human error, system changes should be made to prevent the error in the future.

North Carolina Experience

Julie George, Associate Executive Director of the North Carolina Board of Nursing, joined the Board by conference call to talk with the Board about North Carolina’s Just Culture pilot program. When North Carolina began this initiative they included professional and institutional associations in the discussion.

J. George stated she thought Ohio would be a good state for Just Culture because its PIIP program is similar to the PREP program in North Carolina. She emphasized that Just Culture should not dilute the Board’s mission of public protection and it is not a substitute for discipline. Just Culture should facilitate remediation.

J. George identified that one challenge is public perception when no disciplinary action is taken when patient harm occurs and the incident was due to human error, not reckless behavior. Family members and the public generally believe someone should be punished.

D. Broadnax suggested the Board continue to discuss Just Culture. While many cases are drug related, practice cases may be appropriate for the Just Culture approach. L. Klenke agreed and asked Board staff to review the current processes and identify what barriers may be in the current system that could impact the implementation of Just Culture.

NCLEX TESTING – FOLLOW-UP AND DISCUSSION

L. Robinson stated that the Board discussed NCLEX testing at previous meetings and reviewed the possibility of establishing a limitation on the number of times an individual takes the examination, and setting a time limit as to when a first-time test taker must take the test after completing an education program. The Nursing Education Advisory Group recommended that a time limit be set for first-time test takers, but did not specify the length of time.

After discussion, the Board agreed by general consensus to establish a one-year limitation that would require a first-time test taker to take the NCLEX examination within one year of graduation. The Board also discussed the feasibility of requiring remediation for an applicant who does not pass the NCLEX after 4-5 attempts. Board staff agreed to contact the West Virginia Board of Nursing-RN to research their requirements for remediation courses.

J. Boeckman stated that educators have requested that if an applicant takes the NCLEX for the first time after a certain number of years and fails, that this be considered an outlier and not be calculated as part of the nursing program's pass rate.

L. Robinson reported that staff is pulling data to determine if there is a correlation between NCLEX testing and compliance cases. Staff is not sure if the project can be completed because it may require a manual review of records. The Board indicated that a manual review is not necessary. Board staff will determine if the additional data can be obtained from NCSBN.

LPNS AND IV THERAPY – FOLLOW-UP

The Board received a memo summarizing a question received from Omnicare regarding LPNs and IV therapy. L. Emrich answered questions. J. Jane McFee stated that historically the question about the LPN's role in IV therapy has been controversial. Board staff believes there is consensus that the statutory and administrative rule language regarding LPNs and IV therapy is confusing and difficult to read and recommended that a Board Committee on Practice be formed to discuss and consider possible statutory and regulatory changes regarding LPNs and IV therapy. Further, the same Board Committee could also review the proposed changes to Chapter 4723-4, OAC, Standard of Practice Relative to RN or LPN. By establishing a Board Committee on Practice, interested parties could attend the meetings for input on practice.

The Board agreed to establish a Board Practice Committee for this purpose. P. Burns, K. Driscoll, E. Buschmann, D. Broadnax, and J. Jane McFee volunteered to be on the practice committee.

APN DELEGATION OF MEDICATION ADMINISTRATION TO MEDICAL ASSISTANTS

L. Emrich and Teresa Davis provided additional information requested by the Board at the March Board meeting regarding physician delegation, medical assistants, and other states' practices. L. Emrich informed the Board that a researcher from the Ohio State University College of Nursing was collecting data from state boards of nursing regarding APN delegation to unlicensed assistive personnel (UAP).

It was noted that Medical Assistants are UAP in Ohio and the Medical Board law and rules require on-site supervision by a physician. L. Emrich noted that a physician cannot authorize an APN to delegate to UAP through the Standard Care Agreement and an APN cannot assume a physician's authority to delegate. E. Yoon questioned the process of physician delegation in physician offices where APNs are employed. L. Emrich clarified that physicians could choose to be responsible for the delegation of medication and the physician could co-sign the APN's chart, although this is not required by the NPA. L. Emrich clarified that immunizations are covered under the Joint Board Statement as "biologicals" and therefore, can be administered according to protocols established by physician offices and do not fall under the discussion of delegation.

D. Gilbert asked about the Board considering regulating medical assistants. Board members stated that they believe any proposal to do so would meet strong opposition and the Board was not interested in regulating medical assistants at this time.

D. Broadnax stated that the specific issue of APN delegation of medication administration to UAP was discussed when the APN law was enacted and at that time, the decision was that APNs should not delegate medication administration to UAP. E. Yoon stated he was satisfied with the additional information and did not see the need for further discussion at this time.

STRATEGIC PLAN – EVALUATION AND REVIEW FOR 2008-2009

The Board reviewed and discussed the objectives of the two-year strategic plan implemented in 2007. B. Houchen provided a handout and staff answered questions regarding proposed changes to some of the objectives. The Board agreed by general consensus to the changes as outlined. J. Boeckman complimented the practice area noting that nurses are not hesitant to contact the Board with their questions, given the volume of inquiries we receive. The Board complimented staff for tracking the progress in meeting the objectives. Staff will

revise the plan, based on the discussion, and present it to the Board at the May meeting.

Review of Mission Statement

E. Buschmann asked about updating the mission statement because the Board now regulates others in addition to nurses, i.e., dialysis technicians, medication aides, and community health workers.

D. Broadnax stated that these individuals are providing components of nursing care only upon nursing delegation and supervision, so she believes the mission statement is appropriate. The Board agreed by general consensus not to change the mission statement.

TREATMENT OF OPIATE ADDICTION PRESENTATION – DR. EDNA JONES

Dr. Edna Jones provided a presentation on addiction and treatment and answered questions of the Board. The Board thanked Dr. Jones for attending and expressed their gratitude for the information she provided.

LEGISLATIVE AND RULE REVIEW

Dialysis

Cynthia Snyder provided a history of the Board's regulation of dialysis technicians and the revisions proposed at this time. The major changes proposed and agreed to by the Dialysis Advisory Group are as follows:

- Deletion of the temporary certificates (TC 1, 2, and 3); issuance of a dialysis technician intern certificate to those who successfully complete an approved dialysis training program, but have not passed the certification examination. The intern certificate would be valid for two years from the date on which the holder successfully completes a training program, reduced by the aggregated amount of time the holder spent in one or more approved training programs.
- New sections for criminal records checks; this represents a consolidation of these provisions in two sections.
- Deletion of the dialysis registry.
- An endorsement provision that specifies that out-of-state applicants who have not completed an Ohio-approved dialysis training program would be considered for endorsement if he/she passed a national certification examination approved by the Board and has been providing dialysis care in another state for not less than twelve months. In addition, the applicant must complete two hours of continuing education on Ohio law and rules.

C. Snyder stated that proposed statutory changes must be completed prior to the rules being amended, but stated that the draft rules are being provided so Board members could see how the law and rules could be drafted to make the desired changes.

L. Klenke asked if the Dialysis Advisory Group had reviewed this language. D. Broadnax responded that they reviewed the statutory language, but not the rules. The Advisory Group will review the draft rules at a future meeting.

Five-Year Review Schedule

The Board received the listing of the rule chapters that are scheduled for the Chapter 119. five-year review in 2008.

Draft Board Policy – Common Sense Regulation

The Board reviewed Governor Strickland's Executive Order regarding Common Sense Business Regulation that is intended to make Ohio more business friendly. The Board is required to have a policy posted on the web regarding minor violations. H. Fischer presented a draft policy. The Board agreed by general consensus with the policy as drafted.

NCSBN INITIATIVES

Transition to Practice

At the NCSBN Mid-Year meeting, the NCSBN Transition to Practice Committee presented a report. The information from the meeting was provided to the Board for discussion. The NCSBN Transition to Practice Committee recommendation is to require an internship or residency program for new graduates to assist with the transition from school to practice. L. Klenke asked if this topic could be discussed with the Education Advisory Group. The Board agreed to refer it to the Advisory Group that meets in June 2008.

Advanced Practice Nurses

About a year ago, NCSBN released a controversial draft vision paper on Advanced Practice Nursing and since that time, NCSBN has been working closely with interested parties to resolve many issues. The Board received the most recent draft paper and model regulation. It was noted that one recommendation was that collaborative agreements and physician supervision would not be required for APNs, which would be a major change for Ohio law. D. Broadnax stated she believed this paper resolved previous issues identified in the first NCSBN draft vision paper.

Licensure Maintenance

This initiative was presented at the 2008 NCSBN Mid-Year meeting and was generally met with opposition from the states represented at the meeting.

Licensure maintenance is the new term being used by NCSBN for continued competence. J. Jane McFee stated she believes that it would be difficult to measure everyone's competency with one examination because nurses work in many different fields. The Board stated they support competency, but if mandatory testing is proposed by NCSBN, the Board believes this could be a problem for Ohio. The Board stated that they would need to see the core competencies, evidence that testing for continued competency would make a difference in nursing practice and patient safety, and an evaluation of the impact of such a requirement on Board operations and the budget.

EVALUATION OF RETREAT AND ADJOURNMENT

Board Members thanked the staff for the materials and the work done in preparation for the meeting. They also thanked L. Ferguson-Ramos for recommending Dr. Jones as a speaker.

Kathleen O'Dell expressed her gratitude to those who sent sympathy cards upon the death of her mother-in-law.

The meeting adjourned on April 15, 2008 at 2:45 p.m.

Insert Signatures