

**Ohio Board of Nursing Retreat**  
**April 18-19, 2005**  
**9 AM – 4 PM**

*THE MISSION OF THE OHIO BOARD OF NURSING IS TO ACTIVELY SAFEGUARD THE HEALTH OF THE PUBLIC THROUGH THE EFFECTIVE REGULATION OF NURSING CARE.*

The following Board members and staff participated in the retreat held at Cherry Valley Lodge, Newark, Ohio:

Board Members:

Yvonne Smith, MSN, RN, CNS, President  
Mary Jean Flossie, LPN, NHA, Vice President  
Anne Barnett, BSN, RNC  
Judith Brachman, Consumer Member  
Debra Broadnax, MSN, RN, CNS  
Elizabeth Buschmann, LPN  
Kathleen Driscoll, JD, MS, RN  
Cynthia Krueger, MSN, RN  
Bertha Lovelace, RN, BA, CRNA, Supervising Member, Disciplinary Matters  
(arrived 1:00 PM April 18, 2005)  
J. Jane McFee, LPN (April 18 only)  
Teresa Williams, LPN

Absent: Lisa Klenke, MBA, RN, CNA-A  
Kathleen O'Dell, RN, M.Ed., N.C.S.N

Board Staff:

John Brion, RN, MS, Executive Director (April 18 only)  
Betsy Houchen, RN, MS, JD, Associate Executive Director (AM only April 19)  
Rosemary Booker, Fiscal Manager (April 19 AM only)  
Lisa Emrich, MSN, RN, Monitoring Unit Manager  
Lisa Ferguson Ramos, RN, JD, Compliance Manager  
Diana Hisle, Executive Assistant (April 18 only)  
Eric Mays, BS, Operations Manager  
Norma Selders, RN, MS, Education, Licensure & Nursing Practice  
Cynthia Snyder, JD, Legislative/Regulatory Specialist (April 18 only)  
Stacy Thacker, Human Resources

Welcome and Updates      President Smith welcomed Board members and staff. Director John Brion reviewed the retreat agenda. President Smith and Director Brion facilitated the discussions throughout the retreat. Diana Hisle recorded minutes on April 18<sup>th</sup> only.

Announcements      Director Brion stated that registration for the Annual Meeting for the 2005 Delegate Assembly in Washington D.C., August 2-5, was being waived for Member Boards attending. The NCSBN Board of Directors is reducing the financial burden for Member Boards. NCSBN will provide transportation, lodging, registration waivers, and reasonable expenses to attend the meeting for (2) representatives per board of nursing. The deadline to submit the names to NCSBN is May 30, 2005. Director Brion stated that in the past the President and Executive Director attended the Delegate Assembly and that his expenses will be covered as an official NCSBN Board Member, therefore Betsy Houchen could attend in his place. In light of the deadline, the Board of Nursing (Board) supported sending President Smith and Betsy Houchen as Delegates to the Annual Meeting in August.

Legislative Update	Director Brion distributed a copy of the FY 06-07 Budget Testimony before the Senate Finance Committee. Director Brion stated that plans for the consolidation might be returned to its original plan to include all boards. Director Brion highlighted his testimony and stated that an update will be provided during the May Board meeting.
Medication Aides	Director Brion reported that although the language drafted during the March Board meeting was submitted to the House of Representatives, the language was unchanged. He stated that some issues in the House of Representatives need to be worked out. Director Brion and Cynthia Snyder met with Senator Carey's aide last week to discuss their concerns with the current language.
Emeritus Language	Director Brion updated the Board on the status of the Emeritus language. He recently spoke with Senator Carey's aide in order to get the language in a bill. Director Brion reported that Cynthia Snyder is working on a chart to provide updates on legislative matters and that e-mails would be used to keep the Board members apprised of any major changes that occur between Board meetings.
Disciplinary/ Monitoring Units Operation Manual	The Board received the Disciplinary and Monitoring Unit Manual provided by Director Brion, Betsy Houchen, Lisa Emrich and Lisa Ferguson-Ramos. As a starting point, the manual contains information that pertains to both the Disciplinary and the Monitoring Units. The manual can be used as a reference and there is a new format for policy and procedures. The manual contains information that was previously reviewed by the Board or included in the Board Governance Guidelines. Two main sections include the following: 1) "Board Approved Policies and Procedures" consisting of the "Processing and Disposition of Complaints" and "Discipline Priorities and Guidelines," which combined the case priorities with the discipline guidelines to provide guidance for both Board and staff when reviewing cases at all stages of the complaint or case; and (2) the second section entitled "Operational Policies, Procedures, and Documents" consisted of informational documents, consent agreement templates, and internal policies and procedures. In the future, this information will be available on Board members' laptops and additional policies and procedures will be added. Further, the Board member guidelines manual will also be updated and placed on the laptops.
Paperless Board meeting agenda	Director Brion requested direction from the Board regarding an issue with the paperless Board meeting program. A problem arose regarding adding the discussion minutes to the agenda. Eric Mays stated that he is working to try to correct the problem of duplicating items. The Board supported the suggestion to wait until after the last conference call to update the agenda items with discussion minutes to avoid duplication. A few of the Board members expressed concern that the agenda is too hard to follow and needed to be revised. Mr. Mays stated that a revision was made to the Board meeting program to change the status of agenda items to only show the open items. Judith Brachman expressed a need for awareness of the important items in advance with time allotments for discussion. She also requested appropriate timeframes to allow processing time of information provided before each full Board discussions. Ms. Brachman suggested that possibly an agenda addendum could be provided highlighting priorities that included weighty issues with the timelines to focus on before each Board meeting. Following the discussion, it was suggested that following the approval of the Strategic Plan that the agenda could be reviewed. Board members

Paperless Board meeting agenda Cont'd.	Judith Brachman and Kathleen Driscoll volunteered to assist with the review.
Monitoring Unit Review of statutory and rule changes related to the AP and post-discipline monitoring	The Board received a memo regarding post-discipline monitoring submitted by Lisa Enrich, Monitoring Unit Manager. Information was presented on the section of the statute that pertains to the confidentiality of the Board's post disciplinary monitoring. The Board may want to consider pursuing statutory changes to this section to increase the availability of post discipline monitoring information to the public. Currently, all information that is received by the Board in response to a Board ratified consent agreement or adjudication order is confidential and is not available to the public. Ms. Emrich described the Board's options to consider making some of the information confidential or to make all information public except for the federally protected information. The Board asked about the ramifications if the law is changed. Lisa Ferguson-Ramos stated that calls received from the media and prospective employers leaves an impression that the Board is trying to hide information on nurses. Judith Brachman stated that input from employers would help structure the statute change within the parameters of the federal regulations and gain their support. The opposition would come from nurses who are monitored and from their professional associations. The Board supported the proposed changes and requested that Ms. Emrich provide detailed information for the July Board meeting regarding what is considered the medical record, a list of what is in the Board record; and consultation with the Board's AAG, as needed.
Alternative Program Statutory Changes and Alternative Program and Practice Intervention Program Rule Revisions	The Board received a memo regarding Alternative Program (AP) Statutory Changes and Alternative Program and Practice Intervention Program (PIIP) Rule Revisions, submitted by Lisa Emrich, Monitoring Unit Manager. The memo provided suggested changes to section 4723.35 ORC. the Alternative Program (Program) statutes. The purpose of these changes would be (1) to clearly identify the Board Supervising Member as the individual responsible for determining Program eligibility and compliance (as is the current practice), and (2) to allow communication between the Program and the Board's Disciplinary Unit staff. The memo also noted that the Board would need to reconsider other rules pertaining to AP and PIIP. Attached were copies of the current AP rule 4723-6-04(C), OAC, and the PIIP rule 4723-18-09(E), OAC, that allows the Board to be informed that a licensee previously successfully completed either of the two programs in the event the Board is considering action against the licensee. In the fall, 2004, the Board attempted to further operationalize these rules by making changes to chapter 4723-16, Procedures for Conducting an Adjudication, which permitted the disclosure of a licensee's prior successful AP or PIIP completion as admissible evidence at a hearing. During the Board's promulgation of Chapter 4723-16, this change was met with opposition, which resulted in the Board's withdrawal of this particular rule revision. Although the opposition to Chapter 16 rested with the confidentiality of the AP, which involves information that is by nature more sensitive than the PIIP, these programs' basic procedures and confidentiality tenants are similar. It was suggested that the Board revisit rules 4723-6-04(C) and 4723-18-09(E) prior to September 2005, to consider revisions to the respective chapters considering their implementation constraints. Following discussion and review of the suggested changes, the Board supported the suggested changes and requested that Lisa Emrich provide draft language for the July Board meeting. The Board also requested that

Alternative  
Program  
Statutory  
Changes and  
Alternative  
Program and  
Practice  
Intervention  
Program Rule  
Revisions

Ms. Emrich provide draft protocols or policies at the May Board meeting. The Protocols or policies would provide Board guidelines to staff for processing cases and thus decrease the number of cases going to case review.

PREP Model and  
PIIP

The Board received a memo regarding the Practitioner Remediation and Enhancement Partnership (PREP) Model and the Practice Intervention and Improvement Program submitted by Lisa Emrich, Monitoring Unit Manager. The memo stated that in September 2004, the Board reviewed the 2005 Strategic Plan for the Monitoring Unit that included the exploring the incorporation of PREP into the Board's Practice Intervention and Improvement Program (PIIP). The Board began a discussion of how a nursing employer's direct reporting and increased involvement in practice cases may be beneficial to the Board's goals. PREP was implemented by the Citizens Advocacy Center in 2002 to create a method of information sharing between regulatory agencies and health care institutions for the purpose of detecting and correcting poor practitioner performance before the poor practice resulted in patient harm and the need for regulatory sanctions against the practitioner's license. Attached to the memo was background information on PREP. The Board was invited to participate in the PREP pilot project several years ago; but declined because PIIP was in its early stages of implementation. Since that time PIIP rules and processes have been well established, however, because of somewhat narrow range of practice circumstances that are eligible for PIIP, the number of cases referred to PIIP are relatively low. Because of this and the increasing budgetary constraints, the incorporation of PREP as part of the PIIP program may be advantageous to increase the involvement of employers in the creation in individual remedial plans. The expected results could be improved understanding of mandatory reporting of practice issues by employers, increased reporting of practice issues because of the employer's control and increased role in the remedial activity once the Learning Plan is approved by the Board, and less Board staff time to coordinate the workplace monitoring and educational interventions.

Currently, PIIP referrals are made after a complaint has been investigated. The Board's Supervising Member for Disciplinary Matters reviews information about the complaint and the resulting investigation in comparison with the PIIP eligibility criteria, and determines the PIIP referral. A possible alternative to this process is for employers to submit information concerning an employee's practice issue directly to PIIP (including the completion of certain sections of (TERCAP) accompanied by a Learning Plan that has been developed by the employer for the nurse. The complaint or poor practice information and the proposed Learning Plan would be reviewed with the Board's Supervising Member. The result of the review may be to accept the practice issue and Learning Plan and ask the employer to proceed with its remedial process and inform the Board about the outcome of the remedial process. However, the Board may determine that the practice issue is too egregious to be resolved by non-public remediation by the employer at which time the Board would inform the employer that the case will not be accepted for PREP. If the Board chooses to further explore PREP,

- PREP Model and PIIP flow charts will be prepared and presented to the Board at a subsequent meeting in May or July 2005. In addition, David Swankin, JD, the CEO of the Citizens Advocacy Center agreed to speak with the Board at any time about the PREP process at the pleasure of the Board. Following discussion, the Board was in support of implementing PREP. Ms. Emrich agreed to provide additional information from other states' experience for the July Board meeting.
- Disciplinary Unit Use of Fines and Administrative Fees The Board received a memo regarding Fines and Administrative Fees submitted by John Brion, Betsy Houchen, Lisa Ferguson-Ramos, and Lisa Emrich. Attached to the memo were discussion points for two Disciplinary and Monitoring related topics: 1) imposing fees for violations of the nursing law and rules and 2) assessing administrative fees for those being disciplined or monitored. Ms. Ramos began a discussion regarding the workload increase for the Disciplinary and Monitoring units and the use of fines. She pointed out that the question had been raised whether the Board could increase the use of fines as an effective means of enforcement of the law and rules and if fines were increased, would the amount be used in the budget for operational costs thereby delaying an increase in licensure fees. She reviewed the Priority III cases, which generally result in reprimands and fines. Other cases, as an appropriate disciplinary action involving fines would be for minor boundary violations or issues where the nurse exercised poor judgment, but has been a nurse for many years and there are no other complaints. She provided examples of these cases. She noted that the Board discussed the issue of levying fines for disciplinary action in 1998 and 2002. During both discussions, the Board determined that fines should not be used as a substitute for cases where continuing education and monitoring is necessary to protect the public. The Board began a discussion on the pros and cons of increasing the use of fines. The Board has the authority to impose a fine of up to \$500 for each violation of the law and rules. Currently, the Board usually imposes a total fine of \$500 per licensee regardless of the number of violations. The Board could fine per violation, i.e., if there are three violations, the fine could be \$1,500. Another option would be to add fines for violations in certain consent agreements. For example, for one licensee, the consent agreement could be a fine for a violation and probation for another violation. The benefits of utilizing a reprimand and fine, as discipline, are that it creates a record of action while sending a message to the licensee about his/her conduct in the case. The disadvantage to issuing fines for these cases that the Board previously closed or issued Advisory Letters, is that it creates a greater workload for staff to complete the cases and for the Board to review the cases. The staff has been looking at ways to effectively enforce the laws and rules, but streamline the work processes and management of the work because staffing is limited. Ms. Ferguson began a discussion regarding seeking a statutory change that would set forth the amount of a renewal fee that must be paid when a nurse has worked on a lapsed license. This could eliminate the need for the case to be processed through the disciplinary or monitoring units. Other states have tied a fee to renewal or reactivation and then the case is not a disciplinary case. Pennsylvania law sets forth a \$1,000 fee for practicing on a lapsed license for any amount of time. The nurse must pay the fee before being eligible to renew or reactivate the license and no disciplinary action is required. Another option the Board discussed was to consider a law change mandating renewal fees for nurses who do not complete the required continuing education. This would minimize or eliminate the requirement for the

Disciplinary Unit  
Use of Fines and  
Administrative  
Fees

case to be processed in the disciplinary or monitoring units. If the Board substitutes a fine for probationary consent agreements, while the burden is decreased for the monitoring unit, there is concern about cases that should be monitored, but would not be, and this will increase the risk to the public. These are cases where the initial violation may be a positive employment screen, but upon monitoring with drug/alcohol screens, more serious abuse issues are found. It may be difficult to rely on a set amount in fines because of licensees failing to pay or claiming inability to pay based on their financial situation. Board member Judith Brachman agreed that the Board should look at issuing fees; however, is frustrated regarding these weighty items and needs this type of information earlier to have an in-depth discussion. Elizabeth Buschmann stated that this is good information and likes the idea of the renewal/reactivation fee. This would require a law change and if a consent agreement were required, it would also increase the workload. The Board supported the idea to define and establish protocols on the use of fines and to discuss further the budgetary impact and additional workload related to fees. The Staff were asked to provide additional information to the Board. Cynthia Snyder reminded the Board that the General Assembly might consider raising fees as a "tax" and for the Board members to think about that aspect.

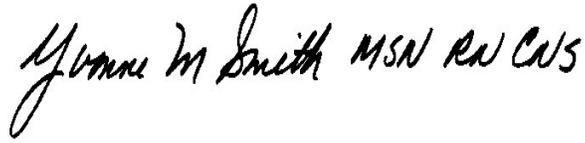
Use of  
Administrative  
Fees

The Board then began a discussion regarding the use of Administrative fees as a separate issue. Lisa Ferguson Ramos reviewed the prepared information that was distributed and issues to consider if the Board decided to pursue Administrative fees as an option: (1) this would require a law change; how would the Board track the cost; if the Board charged for investigator time, (2) how would the Board account for differences in individual investigators? For example, the same case types may take one investigator two hours, but another five hours; (3) would this be an impediment to licensees' agreeing to settle via a Consent Agreement and therefore force the Board to take more cases to hearing and incur the increased costs of hearings; and (4) if the Board charged for the cost of the hearing, does the licensee have to pay only if the Board prevails? Does "prevail" mean that the Board is upheld on appeal thus causing more Board Orders to be appealed. If the Board does not "prevail," would the Board in turn have to pay for the licensee's attorney fees? Ms. Ferguson reviewed other states processes, but noted that other states do not follow the legal process that is set forth in Chapter 119. Some states charge licensees a monthly fee for monitoring or participation in an alternative program. If the Board decided to charge an Administrative fee to cover the costs of monitoring, the issues that the Board would need to consider are: (1) this would require a law change; (2) how would the Board determine and track the cost; and (3) would this discourage licensees from participating in the Board's alternative program or entering into a Consent Agreement thus increasing the number of hearings? The Medical Board has considered and researched this issue as a way of covering administrative costs and determined that it was not feasible. The Board supported this idea and requested that staff bring back more information in the form of an outline listing the pros/cons regarding issuing fees for working on a lapsed license, CE's, etc. to the July Board meeting.

- Possibility of Increasing the Number of Absolute Bars      Director Brion began a discussion on the possibility of increasing the number of absolute bars to licensure. This would streamline and reduce disciplinary work. A list of felony bars would be good for students to know upfront before entering nursing education programs. The Board supported the idea of expanding the absolute bars to licensure based upon the information provided and requested that staff provide a feasible list and legislative acceptance.
- Use of more than one Consent Agreement      Board member Cynthia Krueger expressed concerns regarding use of more than one consent agreement for the same person with multiple issues. Lisa Ferguson Ramos explained that in some cases these are addendums to a Consent Agreement. President Smith added that frequently cases have multiple issues. Ms. Krueger stated that the explanation was very helpful.
- Discussion of the Operational Manual for the Discipline and Monitoring Units      Following review and discussion of the Operational Manual, Lisa Ferguson-Ramos and Lisa Emrich answered questions of the Board for clarification. Board members made suggestions for revisions to be brought back to the May Board meeting on a CD for uploading to their laptops as an available resource. Director Brion reminded the Board that all policies and guidelines will be reviewed every other year or at anytime if necessary.
- Strategic Plan Discipline Administrative Review of total plan      The Board received the draft Disciplinary and Administrative Strategic Plans for review. They also received the previously reviewed plans for the other Board units. The Board supported the draft Discipline & Administrative Strategic Plans with some revisions. The Board requested that the total Strategic Plan for all units be presented in a table format at the May Board meeting in order to show progression toward each goal.
- Other topics      President Smith introduced a topic for discussion on the differences in the number of required clinical hours in nursing education programs. Jackie Loversidge revealed this information while conducting research for an audit last year. The Board requested that this item be placed on the May Board meeting agenda and that Ms. Loversidge provide information showing the broad spectrum of hours in each program with an explanation for the selected hours in order to determine a minimum standard.
- On Monday April 18, 2005, the retreat ended at 4:00 p.m.
- Tuesday April 19, 2005      Facilitator/Speaker Les Helms provided a presentation during the morning session on “Emotional Intelligence” and during the afternoon session a presentation on “Personality Types.”

Adjournment            The retreat adjourned at 4:00 p.m. on Tuesday April 19, 2005.

Yvonne Smith, MSN, RN, CNS  
President

Handwritten signature of Yvonne M. Smith MSN RN CNS in black ink.

Attest:

Handwritten signature of John M. Brion RN, MS in black ink.

John M. Brion, RN, MS  
Secretary