

**SC DEPARTMENT OF LABOR, LICENSING AND REGULATION  
STATE BOARD OF NURSING**

**STRATEGIC PLANNING MEETING MINUTES – APRIL 19, 2007**

President Suzanne White called the South Carolina Board of Nursing Strategic Planning Meeting to order at 9:00 a.m. on April 19, 2007 at the Fire Marshal's Office on Monticello Trail, Columbia, S.C. In accordance with the S.C. Freedom of Information Act, the meeting notice was properly posted at the Board offices and provided to requesting persons, organizations and news media. A quorum was present at all times. The Board's mission was read: *The mission of the State Board of Nursing for South Carolina is the protection of public health, safety, and welfare by assuring safe and competent practice of nursing.*

CALL TO  
ORDER PLACE  
OF MEETING  
AND FOIA  
COMPLIANCE

Suzanne K. White, RN, MN, FAAN, FAHA, FCCM, CNAA, President  
Congressional District 4 ..... *Present*

Brenda Y. Martin, RNC, MN, CNAA, Vice-President  
Congressional District 5 ..... *Present (Out 10:55 a.m. - 1:20 p.m.)*

C. Lynn Lewis, RN, EdD, MHS, Secretary  
Congressional District 3 ..... *Present*

Debra J. Doria, LPN  
Region II, Congressional District 4 ..... *Absent*

Carrie H. James, RN, MSN, CNA-BC, CCE  
Congressional District 6 ..... *Present (Out at 3:00 p.m.)*

Mattie S. Jenkins, LPN  
Region I, Congressional District 1 ..... *Present (Arrived 9:15 a.m.)*

Rose Kearney-Nunnery, RN, PhD, CNE  
Congressional District 2 ..... *Present*

Trey Pennington, MBA, MS  
Public Member ..... *Present*

Sylvia A. Whiting, PhD, APRN-BC  
Congressional District 1 ..... *Absent*

One Public Member Vacancy

BOARD  
MEMBERS  
PRESENT AND  
VOTING

Adrienne R. Youmans, Director, Department of Labor, Licensing and Regulation  
Lynne Rogers, General Counsel, Department of Labor, Licensing and Regulation  
Ruby E. Brice, Assistant Deputy Director – Health & Medically Related Professions  
Joan K. Bainer, RN, MN, CNA BC, Board Administrator  
David Christian, III, Program Coordinator – Licensure / Compliance  
Maggie S. Johnson, RN, MSN, CNLC, APM, Program Nurse Consultant-Practice  
Nancy G. Murphy, RN, BC, MSN, CPM, Program Nurse Consultant-Education  
Sherry A. Wilson, Program Assistant - Monitoring  
Dottie M. Buchanan, Administrative Assistant  
Dwight G. Hayes, Litigation Counsel  
Marvin Frierson, Litigation Counsel

BOARD &  
OTHER LLR  
STAFF  
MEMBERS  
PRESENT FOR  
CERTAIN  
AGENDA ITEMS

The April 19, 2007 Board of Nursing Strategic Planning meeting agenda was presented to the Board for review and approval.

APPROVAL OF  
AGENDA

A motion was made to approve the April 19, 2007 Board of Nursing Strategic Planning meeting agenda as presented. The motion received a second. The motion carried unanimously.

MOTION

At their March 2007 meeting, the Board reviewed the nomination of Patricia M. Smith, CNM to serve as a certified nurse midwife representative on the Advanced Practice Committee. The Board asked that they be provided with a copy of Ms. Smith's current nurse midwife certification for review. Ms. James recused herself from discussion due to knowledge of the nominee.

A motion was made to approve Patricia M. Smith, CNM to serve on the Advanced Practice Committee. The motion was amended to add that Patricia M. Smith, CNM maintain her certification that will expire in August 2007. The amended motion received a second. The motion carried unanimously.

The Board discussed master's prepared advanced practice registered nurses versus the advanced practice registered nurses who were grandfathered in for licensure without a master's degree. The Board discussed requirements for members of the Advanced Practice Committee. Ms. Johnson reported that the Committee has been working on standards for committee membership. The Board asked that the Advanced Practice Committee continue the development of standards for membership to include the percentage of non-masters degree prepared nurses that may serve on the Committee for their review and approval.

Ms. Bainer provided the Board with an update of current legislation affecting nursing.

A bill requiring more legible prescriptions is being considered by the general assembly. They want prescriptions to be easy for the patient and their caregivers to understand. Example given was using scientific name rather than common name. This bill was held over to be considered with the electronic prescription bill.

There is currently a House bill that would require that a controlled substance prescription identical to previously prescribed medications may not be written or dispensed any earlier than 48 hours from the date of the previous prescription. There are exemptions for terminal illness or medical necessity.

One of the sponsors of the criminal background check bill debated the bill because it said "may" instead of "must" perform a criminal background check on new license. He was afraid that the Board would be discriminatory in choosing who had to undergo the criminal background check. There is a grant that will assist with the initial fiscal impact. This bill also impacts the Compact and safety.

The Surgical Technician Bill received a favorable report. The language acknowledges registered nurse first assistants.

At the House committee hearing on the "Housekeeping" bill, a Christian Science representative asked that recognition of Christian Science Nursing be added as an exemption in the Nurse Practice Act. This would allow Christian Science nurses who do not have nursing training to identify themselves as nurses within their religious group. Judy Thompson from the South Carolina Nurses Association testified that this change would jeopardize nurse title protection as provided for in Section 40-33-30 of the Nurse Practice Act. Ms. Bainer provided information from the May 2005 meeting where the Board turned down a similar request from the same person. Representative Chaulk offered to meet with the Christian Science representative at another time to discuss this issue.

The Nursing Education Program Regulations received a committee favorable report. We expect the bill to continue to move smoothly.

Ms. Bainer and Mr. Christian asked that the Board approve a "usual sanctions" list to avoid

USUAL  
SANCTIONS

confusion during hearings and for the licensees under Board order as well as their employers. When the Board orders "usual sanctions" to be included in the order, it is understood that the order will include 1) probation; 2) registered nurse to be on-site and on-shift supervision; 3) no home health or agency; 4) quarterly employer reports; 5) Legal Aspects of Nursing Workshop; 6) access may be restricted by the Board order or allowed to be restricted by the director of nursing in the order; and 7) no mood altering can be included if appropriate.

Ms. Bainer suggested that the definition of supervision from the Nurse Practice Act be added to the orders so that employers understand better is expected. She explained that the Disciplinary Review Committee (DRC) asked that supervision be defined in orders and agreements. Several licensees have come before the DRC and stated that a registered nurse was not on site to supervise them or that the supervising nurse was not aware of the Board order or agreement. Section 40-33-20 (57) of the Nurse Practice Act defines supervision as "the process of critically observing, directing, and evaluating another's performance."

Mr. Hayes stated that many supervisors do not understand their responsibility in monitoring. As Ms. Bainer approves work settings, she educates the director or nursing on what they need to be aware of for the supervision of a disciplined licensee as well as information on reports.

Because of supervision requirements in an order, many nurses have problems obtaining nursing positions. The supervision requirement limits the shifts that can be worked. Ms. White and Ms. Martin stated that utilization may be a good work setting for some nurses with workplace restrictions and should be considered when approving sites.

The Board discussed the restriction for no home health or agency. There was concern that some nurses could be practicing telenursing with no supervision just as they may do in a home health care situation. It was suggested that home health be changed to home based care for situations such as performing insurance evaluations in the home.

A motion was made to approve the list of "usual sanctions" to be included in orders, it is understood that orders will include 1) probation; 2) registered nurse to be on-site and on-shift supervision; 3) no home health or agency; 4) quarterly employer reports; 5) Legal Aspects of Nursing Workshop; 6) access may be restricted by the Board order or allowed to be restricted by the director of nursing in the order; and 7) no mood altering can be included if appropriate but to change "home health" to "no home based care or telenursing" and to add Recovering Professionals Program is appropriate. The motion received a second. The motion carried unanimously.

MOTION

Neal B Kauder, President of VisualResearch, Inc along with Robert A. Nebiker, former Director of the Virginia Department of Health Professions gave a presentation on Sanction Reference Points (SRP). VisualResearch has developed a system of assigning points to determine the appropriate sanction. Points are assigned for the offense to include but not be limited by whether there is more than one case, if there was patient injury or impairment this along with points for whether the respondent has a related criminal conviction, prior board orders in the state or any other state, impairment, etc. Those points are added to decide the disciplinary action to be taken.

SANCTION  
REFERENCE  
POINTS

Ms. Johnson reported that 4,794 nurses were randomly audited for documentation of their continued competency and that we are still receiving information from them. Several issues have arisen during this first audit since biennial renewal.

CONTINUED  
COMPETENCY  
AUDIT

Issue # 1

Some nurses when audited put their license on inactive status. Reasons given for going inactive included but were not limited to:

- Just picked a competency option so that they could maintain an active license
- Several were currently retired, on workman's compensation or have a permanent medical disability.
- Some went inactive when audited and a few months later requested to reinstate their license.
- Some met standard with employer verification but still went inactive

Although information has been included in many issues the SC Nurse and Palmetto Nurse as well as on our website, there seems to be a knowledge deficiency.

Staff recommended that we flag the licensure record of the nurses who went inactive because they did not meet the requirements and require a Board appearance before reactivation.

The Board discussed whether there needed to be some type of disciplinary action such as a possible private reprimand or a letter of caution. Although it is understood their desire to keep a license that they worked hard for, they did not meet the criteria to renew that license. Because they did not meet the criteria to renew, their license is not valid. In some cases, the nurse has not continued to practice. There was concern that they still have a pocket license in their possession. Other boards reprimand and fine licensees who falsified the continuing education requirement. There was discussion about listing disciplined nurses in the newsletter what about listing these? If inactivated, verification would only show inactive. Inactive does not say why the license is inactive. They could reinstate but would require them to meet the requirement and answer to whether they worked during that time period. If someone does not renew, we place their license in a lapsed status. No notice is sent because they chose not to renew. If we lapse the license of someone who did renew but did not meet audit requirements, we must notify them. There was concern that employers may have checks licenses shortly after renewal but may not necessarily check them between renewals for long time employees. A list could be published in the newsletter of those whose licenses are lapsed. This would notify employers. The Board agreed that those who have to date paid for inactive status, should not be changed to a lapsed status.

For future audits, it was suggested that letters be sent out in smaller more manageable batches. Letters should give a date that the information must be received by.

A motion was made to flag the licensure computer record of nurses who have officially requested and paid for official inactive status without meeting renewal requirements and require them to appear before the board prior to reinstatement. The motion received a second. The motion carried unanimously.

MOTION

A motion was made for the licenses of those not meeting the continued competency requirements of the audit to be placed in a lapsed status effective August 30, 2006, issue a public reprimand and fine, the names will be published in the Palmetto Nurse newsletter and a personal appearance may be required at the discretion of the Board President. The motion received a second. The motion carried unanimously.

MOTION

A motion was made to assess a \$500 fine along with the Public Reprimand for unlicensed practice. The motion received a second. The motion carried unanimously.

MOTION

The above motions are for this current audit. The process and penalties will be reviewed for future audits.

Mr. Christian has researched companies that keep a record of continuing education for licensees. The company said that they have flexibility for our board and other options for renewal.

ISSUE #2 –

Licensee did not change their address with the Board as required by Section 40-33-38(C) of the Nurse Practice Act. Some nurses stated they did not get letter sent by regular mail but then signed for the certified letter sent to the same address.

The Board discussed what type of discipline was appropriate for nurses not changing their address with the Board as required by statute. It is important that the Board have the correct address for issues such as audits, investigations, etc. The Board discussed that a letter of concern does not send a strong enough message but that a private reprimand may be the better solution.

A motion was made to issue a private reprimand to those nurses who did not change their address with the Board as required by Section 40-33-38(C) of the Nurse Practice Act. The motion received a second. The motion carried unanimously.

MOTION

ISSUE #3 –

No response to audit letter. In some instances the certified letter was returned but in some instances the letter was signed for but there was still no response.

A motion was made to place licenses in a lapsed status for those who did not respond to the audit request effective August 30, 2006, when reactivating charge a \$500 fine, require proof of competence and publish the names in the Palmetto Nurse. The motion received a second. The motion carried unanimously.

MOTION

ISSUE #4 –

Responses received after September 1, 2006. Some nurses stated they did not get the letter sent in July but received the certified letter sent to the same address. Some nurses sent explanations and explained why it was late. The certified letter gave until September 1, 2006 for nurses to respond. They met the requirements but were late sending in the information. We worked with those who were legitimately out of town. Some nurses stated that pursuing their higher educational degree, cruise/vacation, etc. was more important.

A motion was made for those nurses who met the competency requirement but were late in responding to the audit request to be issued a private reprimand and a \$100 fine. The motion received a second. The motion carried unanimously.

MOTION

ISSUE #5 –

The option chosen was not complete or they did not meet the requirement. For example, the nurse does not have 30 contact hours prior to April 30, 2006, only has ten contact hours, sent in an incomplete employer certification form, provided a transcript with no nursing courses, or have minimal hours (the lowest was 24 hours in 2 years) worked and the employer signs the employer certification form. Many nurses could not remember which option they selected on their renewal. Over half of the licensees changed their mind regarding the option they used and the option they selected at renewal.

A motion was made to place licenses in a lapsed status effective August 30, 2006 for those who did not complete the competency requirement prior to renewal, to issue a public reprimand, require documentation of competency prior to reinstatement, publish names in the Palmetto Nurse newsletter and a personal appearance before the Board may be required at the discretion of the Board President. The motion received a second. The motion carried unanimously.

MOTION

ISSUE #6

Employer certifications were signed by someone other than the nursing supervisor. In some facilities, the supervisor may not be allowed by policy to sign the form. It is recommended that the employers sign the forms in advance so that they will not be overburdened at renewal time and so the nurse will not be waiting for the employer to sign the form when audited.

The National Council of State Boards of Nursing has looked at absolute bars and time limited bars for nurse licensure. Mr. Christian stated that he likes the fact that each case in South Carolina is reviewed individually and a determination is made on the merits and mitigating circumstances of the case. Schools have absolute bars for students. Some academically qualified students are not allowed into nursing school due to past convictions. Some students will be stopped when they begin clinicals due to required criminal background checks and facilities' policies.

ABSOLUTE  
BARS

A motion was made to authorize the Board President or designee to continue to sign consent agreements. The motion received a second. The motion carried.

MOTION

The Board reviews Investigative Review Committee (IRC) reports for dismissals, formal complaints, and letters of concern. The IRC is currently using the grid developed by the Board. Some IRC members have told Ms. White that investigators were making recommendations for settlement parameters in their meetings. Respondents with fully executed consent agreements are not required to appear before the Board; however, these consent agreements are signed by the Board president.

BOARD  
PRESIDENT  
AUTHORITY TO  
SIGN CONSENT  
AGREEMENTS

Ms. White asks for information on the case in order to make an informed decision on whether she should sign an agreement or not. Even though the respondent has signed the agreement admitting to violation of the Nurse Practice Act, the agreements sometimes have had information missing from the sanctions section. An example of an item in the past that needed to be changed was a nurse who didn't have an abuse or addiction had abstaining from mood altering substances in their agreement.

Ms. Brice stated that other full boards review each of their consent agreements but that they have a much smaller volume than the Board of Nursing. Ms. Youmans explained that Residential Builders has a large volume of consent agreements also but that they meet and review them each month.

The Board stated that they will review the consent agreements at the Board meetings and see what the volume is. Due to the volume of consent agreements, the meetings will be at least two day meetings.

Ms. Rogers explained that there is currently a case before the courts as to whether a board could delegate the authority to sign the agreements to their president without board review. She stated that she would feel more comfortable if the consent agreements came before the board. Ms. Rogers will keep the Board apprised of the outcome of this case which would impact how the Board handles this in the future. Although, Ms. White as Board President can sign orders, it may be better if one of the other officers signed orders for Ms. White's employees.

Ms. Bainer currently attends all Investigative Review Committee (IRC) meetings. Ms. Brice suggested that a Board member attend an IRC meeting. Mr. Pennington volunteered to attend the IRC meeting on April 24, 2007.

REVIEW OF IRC,  
DRC & HEARING  
PANELS-  
COMPOSITION,  
TRAINING, ETC.

The Board was reminded that under the new policy, some respondents who would have been temporarily suspended will now be offered consent agreement within the guidelines approved by the Board.

Mr. Christian asked what the purpose of the IRC would be if consent agreements are offered. Ms. Youmans asked about possibly removing the IRC from the process. Ms. Rogers stated that the Engine Act provides that all investigations are reported to the Board. Without an IRC, staffing, perhaps Ms. Bainer and Mr. Christian, of the investigations would still be needed utilizing the guidelines set by the Board. The Board does not want to make a decision to dissolve the IRC until further information is received.

Ms. Brice reported that a curriculum is being developed for panel members. In the past, Donald Hayden went over materials with each new member as they were approved by the Board.

Mr. Christian reminded the group of discussion to recruit more members for the Disciplinary Review Committee (DRC). Currently there are only two members both of which are past board member. Ms. Bainer explained that recently one of the members was ill and unable to attend the meeting. A criteria needs to be developed for members of the DRC. Dr. Kearney-Nunnery suggested that maybe some of the IRC members could be trained as DRC member. Ms. Youmans stated that she is not aware of any other boards that utilize disciplinary review committee. Ms. Rogers wants to make sure that due process is provided in all situations.

Mr. Frierson explained that most of the temporary orders of suspension had been issued due to noncompliance with the Recovering Professionals Program (RPP) or for some who have not paid their fine or failed to take a required course. Currently, temporary orders of suspension are issued only where there is a danger to the public. If the respondent is an RPP participant, they may attest to safety. The orders are usually issued within 24 hours. They are faxed to the Board president as well as mailed by regular mail. These orders are personally served. This is sometimes hard to accomplish because the nurse may move. It was suggested that when consent agreements are signed that the respondent be asked to update the board on their current address, current employment, etc. Ms. Youmans and Ms. Rogers stated that if we send consent agreements, orders, etc. to the address we have been provided and the document is not returned, the document should be considered served. A notice will be placed in the newsletter asking for all nurses to be sure that their address is current on Board records.

DISCUSSION OF  
TEMPORARY  
SUSPENSION  
ORDERS (TSO)  
PROCESS

Ms. Bainer provided the Board with a copy of the Policy on Civil Penalties for Unauthorized Nursing Practice with suggested changes. The changes included changing the statutory references, increasing penalties, changing situations that require Board appearance, and changing "official recognition" to "advanced practice registered nurse." Staff reviewed fines charged by other states and found that most states have fines much higher than South Carolina.

POLICY ON  
CIVIL  
PENALTIES FOR  
UNAUTHORIZED  
NURSING  
PRACTICE

A motion was made to approve the changes to the Policy on Civil Penalties for Unauthorized Nursing Practice. The motion received a second. The motion carried. (Copy of policy attached)

MOTION

The Board asked that the amended policy be published in the Palmetto Nurse.

Per the Board President's request, Ms. Bainer provided the Board with a copy of the North Carolina Board of Nursing's Administrators and Middle Managers orientation as well as information from the Texas Board of Nursing on their dean orientation. The Board discussed the need for information to be provided not only to chief nursing officers but also nurse managers as well as providing it to faculty in addition to the deans. Ms. Bainer is discussing this with the South Carolina Hospital Association.

CNO/ DEAN  
ORIENTATION

After the Unlicensed Assistive Personnel (UAP) summit in October 2001, a recommendation was made to register, not license, the more advanced certified nursing assistant (CNA) II but

UNLICENSED  
ASSISTIVE

not the CNA I similar to the North Carolina Board of Nursing. It was noted that there is a great deal of discipline associated with CNAs.

PERSONNEL  
(UAP)/  
MEDICATION  
AIDES/ MEDICAL  
ASSISTANTS

There was discussion about the titles used for UAP as well as the tasks being performed. Patient care technicians (PCT) have the same training as a CNA but take more advanced classes to include phlebotomy and catheters.

Currently, CNAs must be certified to work in long term care. Healthcare systems at include long term care and acute care require all CNAs to be certified. It was noted that some facilities are hiring nursing students during the summer and referring to them as "Nurse Externs." There was some concern about the word "nurse" and confusion that it may cause for patients.

In previous discussion, the fiscal impact, staffing for the Board, investigators and attorneys, revisions to the Nurse Practice Act and the Compact were concerns. It was discussed that if the Board began regulating the CNA, if the staff from the other agencies currently working with CNAs could be used. The staff at the Department of Health and Environmental Control is state funded. The Board discussed only considering upper level CNA and medication aides.

A motion was made to explore including currently certified medication aides in regulation of certified nursing assistants. The motion received a second. The motion carried unanimously.

The next meeting of the South Carolina Board of Nursing will be held on May 17-18, 2007.

ADJOURNMENT

A motion was made to adjourn the meeting at 3:40 p.m. on April 19, 2007. The motion received a second. The motion carried.

MOTION

Respectfully Submitted,  
Dottie Buchanan, Administrative Assistant

## **POLICY ON CIVIL PENALTIES FOR UNAUTHORIZED NURSING PRACTICE**

Recently the Board of Nursing revised the policy statement on civil penalties and sanctions for unauthorized nursing practice. Civil penalties for failure to comply with basic nursing licensure and advanced practice of nursing to include prescriptive authority (and notification of change in practice) have been revised. *The following is the policy of the Board as revised on April 19, 2007.*

### **POLICY:**

All licensure applications are reviewed for compliance with the mandatory authorization provisions of Sections 40-33-38 and 40-33-40 South Carolina Code of Laws, 1976, as amended. Applicants or licensees found to have practiced nursing as defined in Sections 40-33-20 (43), (46), (47), (48), without a current South Carolina authorization to practice as required in Section 40-33-30 are subject to disciplinary action. By consent agreement, the applicant may accept sanctions as established by the Board.

### **PROCEDURE:**

The Responsible Board Staff Member:

1. Queries applicant / employer to determine if there has been unauthorized nursing practice.
2. If no violation and the continued competency requirement has been met, approves the application authorizing a license to be issued.
3. If violation is documented negotiates a consent agreement for sanctions according to the following guidelines established by the Board.
4. Stated penalties below are the *minimum* amounts staff may accept in negotiating consent agreements. Required personal appearances before the Board may not be waived except in unusual situations upon recommendation of the Board Administrator and approval of the President or designee, in their discretion, in order to avoid inappropriate hardship or manifest injustice.
5. The Board is provided for review a list of names, number of days practicing without a license and civil penalty assessed.

I. Basic Licensure [Licensed Practical Nurse (LPN), Registered Nurse (RN), Advanced Practice Registered Nurse, (APRN)]

A. Unauthorized Nursing Practice - First Offense

1. Private Reprimand
2. Civil Penalty
  - a. 1 to 30 calendar days \$ 250
  - b. 31 to 60 calendar days \$ 500
  - c. 61 to 120 calendar days \$ 750
  - d. 120 to 365 calendar days \$1,000 Personal appearance may be required at the discretion of the Board President.
  - e. Greater than 365 calendar days \$2,000 Personal appearance may be required at the discretion of the Board President.

B. Unauthorized Nursing Practice - Second Offense

1. Public Reprimand
2. Civil Penalty
  - a. 1 to 30 calendar days \$ 750
  - b. 31 to 60 calendar days \$1,000
  - c. 60 to 120 calendar days \$1,500
  - d. 120 to 365 calendar days \$2,000 1 year probation, quarterly employer reports, legal aspects workshop, **and** personal appearance may be required at the discretion of the Board President.
  - e. Greater than 365 calendar days Board appearance required. Civil penalty and sanction to be determined by the Board.

- C. Unauthorized Nursing Practice - Third or Greater Offense: Application must be presented to the Board for resolution. Personal appearance before the Board by the applicant/licensee is required

- II. Failure to Notify Change of Practice within 15 days- Advanced Practice Registered Nurse
  - 1. Private Reprimand
  - 2. Civil Penalty
    - a. 15-30 calendar days \$ 500
    - b. 31-60 calendar days \$ 750
    - c. 61-90 days \$1,000
    - d. Beyond 90 calendar days Board review (personal appearance required)

- III. Prescriptive Authority - Advanced Practice Registered Nurse

- A. Failure to Register / Renew - First Offense

- 1. Private Reprimand
- 2. Civil Penalty
  - a. 1-30 calendar days \$ 500
  - b. 31-60 calendar days \$1,000
  - c. Beyond 60 calendar days Board review (personal appearance required)

- B. Failure to Renew - Second Offense

- 1. Public Reprimand
- 2. Civil Penalty \$2,000 (Note: If second offense occurs within a five-year period, the nurse must reapply for Advanced Practice Registered Nurse Licensure)

- C. Failure to Renew - Third or greater offense- Application must be presented to the Board for resolution. Personal appearance before the Board by the applicant/licensee is required.