

VIRGINIA BOARD OF NURSING
VIRTUAL BUSINESS MEETING MINUTES
October 14, 2020

TIME AND PLACE: The virtual meeting via Webex of the Board of Nursing was called to order at 8:35 A.M. on October 14, 2020.

PRESIDING: Jennifer Phelps, BS, LPN, QMHP-A, CSAC; President

MEMBERS PARTICIPATING

VIRTUALLY: Marie Gerardo, MS, RN, ANP-BC; First Vice President
Mark D. Monson, Citizen Member; Second Vice President
Margaret J. Friedenberg, Citizen Member
Ann Tucker Gleason, PhD, Citizen Member
James L. Hermansen-Parker, MSN, RN, PCCN-K
Louise Hershkowitz, CRNA, MSHA
Brandon A. Jones, MSN, RN, CEN, NEA-BC
Dixie L. McElfresh, LPN
Ethlyn McQueen-Gibson, DNP, MSN, RN, BC
Mark D. Monson, Citizen Member
Meenakshi Shah, BA, RN
Felisa A. Smith, RN, MSA, MSN/Ed, CNE
Cynthia M. Swineford, RN, MSN, CNE

MEMBERS ABSENT: Yvette L. Dorsey, DNP, RN

STAFF PARTICIPATING

VIRTUALLY: Jay P. Douglas, MSM, RN, CSAC, FRE; Executive Director
Claire Morris, RN, LNHA; Deputy Executive Director
Robin L. Hills, DNP, RN, WHNP; Deputy Executive Director for Advance Practice
Charlette Ridout, RN, MS, CNE; Deputy Executive Director
Stephanie Willinger; Deputy Executive Director for Licensing
Jacquelyn Wilmoth, RN, MSN; Nursing Education Program Manager
Patricia Dewey, RN, BSN; Discipline Case Manager
Francesca Iyengar, MSN, RN; Discipline Case Manager
Ann Tiller, Compliance Manager
Huong Vu, Executive Assistant
Sally Ragsdale, Discipline Specialist

OTHERS PARTICIPATING

VIRTUALLY: Charis Mitchell, Assistant Attorney General, Board Counsel
Elaine Yeatts, Senior Policy Analyst, Department of Health Professions
Matt Treacy, Media Production Specialist, Department of Health Professions
Melvina Baylor, Board of Nursing Staff
Cathy Hanchey, Board of Nursing Staff
Myra Barnes, Board of Nursing Staff

PUBLIC PARTICIPATING

VIRTUALLY:

Scott Johnson, Hancock, Daniel & Johnson, PC
Janet Wall, MS; CEO of Virginia Nurses Association (VNA)
Andrew Lamar, Lamar Consulting LLC
Allyson Tysinger, Senior Assistant Attorney General/Section Chief - **joined at 9:44 am**
Shevellannie Lott, PhD, RN, CNE; Dean of the Hampton University School of Nursing – **joined at 11:45 am**

ESTABLISHMENT OF A QUORUM:

Ms. Phelps welcomed attendees and asked Ms. Vu to take a roll call of Board Members present. With 13 members present, a quorum was established.

Staff and public attendees were identified.

Ms. Phelps thanked Ms. Gerardo and Mr. Monson for their help during her absence.

Ms. Phelps congratulated Ms. Douglas on her position as President of the NCSBN Board of Directors.

ANNOUNCEMENTS:

Ms. Phelps noted the announcements on the agenda.

- Yvette L. Dorsey, DNP, RN, was reappointed to the Board of Nursing as a RN Member on August 14, 2020 for a first four-year term beginning July 1, 2020 and ending on June 30, 2024.
- Ann Tucker Gleason, PhD, was reappointed to the Board of Nursing as a Citizen Member on August 14, 2020 for a first four-year term beginning July 1, 2020 and ending on June 30, 2024.
- Meenakshi Shah, BA, RN, was reappointed to the Board of Nursing as a RN Member on August 14, 2020 for a first four-year term beginning July 1, 2020 and ending on June 30, 2024.
- Dawn M. Hogue, MA, LMT was reappointed to the Massage Therapy Advisory Board on August 20, 2020 for the second four-year term beginning July 1, 2020 and ending on June 30, 2024.
- Maria Mercedes Olivieri, LMT was appointed to the Massage Therapy Advisory Board on August 20, 2020 for a first four-year term beginning July 1, 2020 and ending on June 30, 2024.
- On September 11, 2020, NCSBN issued an announcement that Jay P. Douglas, MSM, RN, CSAC, FRE, Executive Director, Virginia Board of Nursing, has taken over as president of the NCSBN Board of Directors (BOD) due to the resignation of the former president.

Ms. Phelps acknowledged Dr. McQueen-Gibson's participation in a state wide vaccine workgroup.

Staff Update

- Melvina Baylor accepted a new position as Compliance/Safety Officer II position effective September 10, 2020. She vacated the Nursing Discipline Specialist position.

UPCOMING MEETINGS: The upcoming meetings listed on the agenda:

- The NCSBN Board of Directors Strategy virtual meeting is scheduled for October 19-20, 2020 – Ms. Douglas will attend as the NCSBN President of the Board of Directors.
- The Committee of the Joint Boards of Nursing and Medicine business meeting is scheduled for Wednesday, October 21, 2020 at 9:00 am in Board Room 2. Disciplinary proceedings will follow.

ORDERING OF AGENDA: Ms. Phelps asked if Board Members wished to add any items to the Agenda. There were no items added.

Ms. Phelps asked staff to provide updates to the Agenda. There were no additional updates

CONSENT AGENDA: The following items were removed from the consent agenda:

- Mr. Jones removed **C1** Agency Subordinate Tracking Log for discussion
- Ms. Phelps removed **C8** Informal Conference Schedule from January through June 2021 and moved it to Other Matters

Mr. Monson moved to accept the consent agenda as presented. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

Consent Agenda

B1 July 21, 2020	Board of Nursing Business Meeting
B2 July 21, 2020	Panel A - Formal Hearings
B3 July 21, 2020	Panel B – Formal Hearings
B4 July 22, 2020	Panel A – Agency Subordinate Recommendations & Formal Hearings
B5 July 22, 2020	Panel B - Agency Subordinate Recommendations & Formal Hearings
B6 August 13, 2020	Telephone Conference Call
B7 September 2, 2020	Telephone Conference Call
B8 September 15, 2020	Panel A – Formal Hearings

- B9** September 15, 2020 Panel B – Formal Hearings
- B10** September 16, 2020 Panel A – Formal Hearings
- B11** September 16, 2020 Panel B – Formal Hearings
- B12** September 29, 2020 Webex Training Session for Board Members

- C2** Financial Report as of August 31, 2020
- C3** Board of Nursing Monthly Tracking Log
- C4** HPMP Quarterly Report ending September 30, 2020
- C5** The Committee of the Joint Boards of Nursing and Medicine July 21, 2020 DRAFT Agency Subordinate Recommendation minutes
- C6** The Committee of the Joint Boards of Nursing and Medicine August 18, 2020 DRAFT Telephone Conference Call minutes
- C9** Executive Director Report
 - ❖ **C9a** - September 30, 2020 Letter from the NCSBN President, Jay Douglas

- E1** Education Special Conference Committee September 2, 2020 Minutes & Recommendations
- E2** Nursing and Nurse Aide Education Programs Update

Healthcare Workforce Data Center (HWDC) Reports:

- Pathways to BSN: A Look at Virginia’s Registered Nurse Workforce
- Virginia’s Licensed Nurse Practitioner Workforce: 2019
- Virginia’s Licensed Nurse Practitioner Workforce: Comparison by Specialty

F1 Status of Regulatory Actions

Discussion of items removed from the Consent Agenda:

C1 Agency Subordinate Tracking Log – Mr. Jones noted 4 agency subordinate recommendations were modified in July 2020 out of 59 total for calendar year 2020, the total percentage should be about 6.8% not .7% as listed on the log. Mr. Jones added that the total to date, total accepted and total percentage accepted did not reconcile.

Dr. Hills stated that staff will review the log and make any necessary corrections.

Mr. Monson moved to accept **C1** Agency Subordinate Tracking Log with corrections as noted. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

DHP DIRECTOR:

Ms. Phelps stated that both Drs. Brown and Allison-Bryan could not participate today; however, Dr. Allison-Bryan, Department of Health Professions Chief Deputy, has provided a report. Ms. Phelps asked Ms. Douglas to share the report.

Ms. Douglas shared the following from Dr. Allison-Bryan's report.

COVID Vaccine related workgroup update:

First - trust and communication are going to be foundational in this vaccine campaign. It is important that everyone understand that while Research and Development (R&D) for COVID vaccines is of necessity moving quickly, it is not being rushed. Researchers are NOT cutting any scientific corners. They are not being held to a lower standards of efficacy OR safety by the FDA or by any politician. This is not politics; it is science. What is different for the R&D of this vaccine is that the federal government has taken financial risk away from the vaccine producers—they can proceed quickly because business concerns—not safety concerns—are off the table. When you hear folks doubting the vaccines, spread that word.

Second - there are dozens of vaccines under development. At least three are in Phase Three of clinical trials. Phase Three examines if they are effective and if they are safe. They are being given to humans. When they are released it will be because the evidence dictates that they are ready to be released. That might be soon.

Third - because no one knows how long the COVID antibody persists—whether natural antibody or vaccine-induced antibody—it will be important to immunize as many folks as possible using a hierarchy of risk so that some sort of “herd immunity” is induced and this virus is thwarted.

DHP has hosted and participated in many workgroups since March. You may be interested that there are three groups studying marijuana/cannabis in Virginia. One, run by VDACS, is looking at legalization and recreational use of cannabis for adults. That group is divided into three subgroups: legislative/regulatory structures, fiscal oversight, and health impact. Another workgroup, run by HHR is examining expansion of the medical marijuana program. As you know, cannabis oil production, its regulation, and its dispensation is now housed within the Board of Pharmacy. In addition to asking if this is the best home for the program, that group is examining (among other things) whether a combustible product (like marijuana flower) is ever OK for medical use. Last, but not least, the Joint Legislative Audit and Review Commission (JLARC) has been asked to make recommendations for how Virginia could go about legalizing and regulating the growth, sale, and possession of marijuana by July 1, 2022.

Drs. Brown and Allison-Bryan thank each Board Members for their dedication and contributions to the Commonwealth as members of the Board of Nursing (BON).

DISPOSITION OF
MINUTES:

None

REPORTS:

C7 Board of Health Professions (BHP) August 20, 2020 Meeting DRAFT Minutes:

Ms. Hershkowitz stated that the report has been provided electronically and added that two professions, Diagnostic Medical Sonographer and Naturopathic Doctors, were studied by the BHP and were voted not to be regulated.

Ms. Douglas added that information on the BHP criteria for regulating healthcare professions are available on its website.

OTHER MATTERS:

C8 Informal Conference Schedule from January to June 2021

Ms. Morris stated that not all Board Members have their 2021 employment schedules, therefore the schedule is not finalized.

Ms. Douglas suggested that Board Members send informal conference dates to Ms. Morris as soon as possible.

Board Counsel Update:

Ms. Mitchell reported that the Board had two court cases that were dismissed in:

- **Richmond Circuit Court** - CNA Fashakin filed an appeal after the Board denied her reinstatement application. The Court considered the appeal untimely
- **The Court of Appeal** – Highland case regarding a registered nurse who was educated and licensed in Korea and applying for a practical nurse license in Virginia without taking the NCLEX exam. The Board denied the application for licensure.

RECESS:

The Board recessed at 9:13 A.M.

RECONVENTION:

The Board reconvened at 9:19 A.M.

Selection of Nominating Committee:

Ms. Phelps said that staff has provided an electronic *DI Virginia Board of Nursing By Laws (Guidance Document 90-57)* in the agenda package. Ms. Phelps stated that three Board Members are needed for the Nominating Committee. Ms. Phelps volunteered herself. Ms. Friedenber and Ms. Hershkowitz volunteered.

Ms. Douglas stated that per the By Laws, the Board will need a motion for the Nominating Committee.

Mr. Monson moved to elect the Nominating Committee. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

Alternate Plan for 2021 Meetings:

Ms. Phelps said that the Board made adjustments in the meeting dates due to COVID-19 in order to decrease the footprint at DHP and manage the large case load.

Ms. Phelps proposed that for January, March, and May 2021 dates, the Board plans to convene the business meetings virtually and maximize days scheduled for in-person hearings.

Ms. Phelps added that the meeting dates for 2021 have been provided in the agenda and they are:

- ❖ January 25–26, 2021
- ❖ March 22–25, 2021
- ❖ May 17–20, 2021
- ❖ July 19-22, 2021
- ❖ September 13-16, 2021
- ❖ November 15-16, 2021

Ms. Phelps asked Ms. Douglas if there is anything to add. Ms. Douglas stated that the plan is to conduct two panels of formal hearings for two days, Tuesday and Wednesday (since most Board Members are normally scheduled for these days), and one panel either on Monday or Thursday.

Ms. Mitchell reminded the Board that virtual meetings are only applied if the state of emergency is in place.

Ms. Hershkowitz noted that January and November 2021 dates are only two days. Ms. Vu replied it was an error and added that the dates are:

- ❖ January 25-~~28~~, 2021 and
- ❖ November 15-~~18~~, 2021

Dr. McQueen-Gibson asked if Board Members with underlying medical condition can attend formal hearings virtually. Ms. Douglas said that staff will work with the days Board Members are scheduled.

EDUCATION:

E3 Recommendations from October 5, 2020 Education Special Conference Committee Meeting DRAFT Minutes:

Ms. Wilmoth stated that she has no additional information to add.

Mr. Hermansen-Parker moved to accept the E3 Recommendations from October 5, 2020 Education Special Conference Committee Meeting DRAFT Minutes regarding Averett University, BSN Program, US28501100:

- To approve a request for one continued faculty exception
- To approve a request for clinical exception to conduct 67% of total clinical hours in North Carolina for spring 2021.

The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

A Survey regarding the Impact of COVID-19:

Ms. Wilmoth reported that a survey regarding the impact of COVID-19 on fall 2020 and spring 2021 clinical placements was sent to all RN and PN nursing programs.

120 programs responded to the survey.

Of the 114 programs that responded to questions regarding simulation:

- ❖ 16 of those programs are utilizing 100% simulation, and
- ❖ 8 programs are using 0% simulation.

PN programs are using a greater number of simulation hours than RN programs. Chesapeake and NOVA programs are using the most simulation with Southwest region close in usage.

Of the 120 programs that responded:

- ❖ 68 have already reported difficulties in solidifying clinical sites for the spring 2021 semester.
- ❖ 44 programs have not begun planning the spring 2021 semester.

Ms. Douglas noted that Board staff are participating in the state wide clinical workgroup that is comprised of representatives from all health professions education and practice and will report these results.

Mr. Hermansen-Parker reported that in the orientation of new graduates, Sentara Norfolk General Hospital has required a modification due to increased simulation and less hands-on patient care.

Dr. McQueen-Gibson applauded local Virginia Department of Health, especially Hampton Roads-Norfolk area for extending the opportunity for students to complete clinical hours.

Dr. McQueen-Gibson added that she will forward an article from the NY Times titled: *“I’m Training To Be A Nurse During The Pandemic. Here’s a Look at My Strange — But Rewarding — Experience”* to Ms. Vu and it can be shared with Board Members.

Ms. Swineford noted that faculty at Southside Regional Medical Center, are looking at the NCLEX pass rate and faculty satisfaction. Ms. Swineford added that students are dissatisfied with decrease in hands-on clinical experiences.

Ms. Douglas added that NCSBN will have national data coming soon and that so far there has not been a decrease in the NCLEX pass rate.

PUBLIC COMMENT:

Ms. Phelps said that as indicated in the meeting notice on Regulatory Townhall and in the agenda package, comments will be received during public comments from those persons who submitted an email to Huong Vu no later than 8 am on October 14, 2020 indicating that they wish to offer comment.

Ms. Phelps asked if anyone has signed up to comment. Ms. Vu said no one has contacted her requesting to offer comment as of 8 am today and no one was present on the call to make comment.

**REGULATIONS/
GUIDANCE
DOCUMENTS:**

F2 Regulatory Action – Proposed rules for Prohibition on Practice of Conversion Therapy:

Ms. Douglas noted that Allyson Tysinger, Senior Assistant Attorney General/Section Chief, has joined the meeting in order to respond to Board Members questions, if any.

Ms. Yeatts noted that the following were provided electronically:

- Copy of Notice of Intended Regulatory Action (NOIRA) with the comment period started on August 31, 2020 and ended on September 30, 2020
- Copy of comments on NOIRA with two comments on Nursing, one in favor and one opposed, and zero on Nurse Practitioner
- Copy of the Code of Virginia as amended in the 2020 General Assembly
- Copy of current Guidance Document 90-5 on Conversion Therapy
- Copy of draft regulations for Chapter 19 (Nursing) and Chapter 30 (Nurse Practitioner)

Ms. Yeatts said that the draft regulations are based on the law passed and the guidance document of the Board. Ms. Yeatts went through the language of the draft regulations and noted the following amendments to Chapter 19 and 30:

- The definition of “*Conversion therapy*” is included in 18VAC90-19-10 and 18VAC90-30-10
- “*Engaging in conversion therapy*” with a person under 18 years of

age is defined in 18VAC90-19-230.(A)(2)(p) and in 18VAC90-30-220(10) as unprofessional conduct

Mr. Monson asked why the regulations only specify a person under 18 years of age and not including the adults too. Ms. Yeatts stated that regulations were drafted to mirror the §54.1-2409.5 of the Code of Virginia passed by the 2020 General Assembly.

Ms. Tysinger commented that the adults were not included in the law because of litigation risk and constitutional rights such as freedom of speech and freedom of religion.

Ms. Yeatts said that the Board has the following options:

- To adopt the regulations that mirror the Code of Virginia specifying less than 18 years of age
- To not move forward with adopting the regulations
- To amend “*Engaging in conversion therapy*” as unprofessional conduct with persons of any age

Mr. Monson moved to adopt proposed amendments modifying 18VAC90-19 (Nursing) and 18VAC90-30 (Nurse Practitioner) and the Guidance Document 90-5 to conform to the Code of Virginia. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

RECESS:

The Board recessed at 10:33 A.M.

RECONVENTION:

The Board reconvened at 11:32 A.M.

PUBLIC HEARING:

Ms. Phelps said that this is a public hearing to receive comments on proposed amendments relating to a periodic review of regulations for nurse aide education programs.

Ms. Phelps added that as indicated in the meeting notice on Regulatory Townhall and in the agenda package, comments will be received from those persons who submitted an email to huong.vu@dhp.virginia.gov no later than 8 am on October 14, 2020 indicating that they wish to offer comment.

Ms. Phelps asked if anyone has signed up to comment. Ms. Vu said no emails with request for comment were received as of 8 am today.

Ms. Phelps reminded everyone that electronic comment can be posted on the Virginia Regulatory Townhall at www.townhall.virginia.gov or sent by email until November 13, 2020 and comments should be directed to Elaine Yeatts, DHP Policy Analyst.

Ms. Phelps added that all comments will be considered before the Board adopts final regulations at its meeting scheduled for December 2, 2020.

RECESS: The Board recessed at 11:35 A.M.

RECONVENTION: The Board reconvened at 11:45 A.M.

AGENCY SUBORDINATE RECOMMENDATION CONSIDERATION:

Ms. Phelps asked if there are any Respondents who would like to address the Board regarding their Agency Subordinate Recommendation.

Ms. Vu said no Respondents indicated a desire to address their Agency Subordinate Recommendation.

CLOSED MEETING: Mr. Monson moved that the Board of Nursing convene a closed meeting pursuant to Section 2.2-3711(A)(27) of the *Code of Virginia* at 11:48 A.M. for the purpose of considering the Agency Subordinate Recommendations. Additionally, Mr. Monson moved that Ms. Douglas, Dr. Hills, Ms. Wilmoth, Ms. Ridout, Ms. Willinger, Ms. Morris, Ms. Iyengar, Ms. Dewey, Ms. Tiller, Ms. Vu, and Ms. Mitchell attend the closed meeting because their presence in the closed meeting is deemed necessary and their presence will aid the Board in its deliberations. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

RECONVENTION: The Board reconvened in open session at 11:59 A.M.

Mr. Monson moved that the Board of Nursing certify that it heard, discussed or considered only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

#1 Penny Francine McAllister Kidd, RN 0001-160338

Ms. Hershkowitz moved to accept the recommended decision of the agency subordinate to require Penny Francine McAllister Kidd within 90 days from the date of entry of the Order provide written proof satisfactory to the Board of successful completion of the following NCSBN courses:

- *Professional Accountability & Legal Liability for Nurses, and*
- *Righting a Wrong: Ethics and Professionalism in Nursing*

The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

#2 Robin Dawn Bidot, RN

0001-212222

Ms. Hershkowitz moved to accept the recommended decision of the agency subordinate to revoke the license of Robin Dawn Bidot to practice professional nursing in the Commonwealth of Virginia and to modify the Findings of Fact and Conclusion of Law # 1.

The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

#4 Alison Christine Ahrens Maddox, RN

0001-240680

Dr. Gleason moved to accept the recommended decision of the agency subordinate to indefinitely suspend the license of Alison Christine Ahrens Maddox to practice professional nursing in the Commonwealth of Virginia with suspension stayed upon proof of Ms. Maddox's entry into a Contract with the Virginia Health Practitioners' Monitoring Program (HPMP) and comply with all terms and conditions of the HPMP for the period specified by the HPMP. The Order will also modify the Findings of Fact and Conclusions of Law # 8.

The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

MEETING DEBRIEF:

Polling Process for Future Virtual Meeting:

Ms. Phelps said that staff want to conduct a sample polling question to see if the Board wishes to conduct voting of items on the agenda via polling for future virtual meetings.

Ms. Douglas noted that the polling function was not provided during the Webex Training Session for Board Members on September 29, 2020, so Ms. Phelps would like to have the training now before the next meeting.

Ms. Phelps asked staff to review the process. Ms. Ragsdale provided the process of the polling and sample polling questions were conducted. Ms. Ragsdale shared the results of polling questions and the names of Board Members who voted.

The Board discussed the options for Board Members who participate by phone only and whose votes were not recorded. Ms. Douglas said that staff can call those Board Members and ask for their vote after the polling is closed.

Ms. Phelps asked if the Board wishes to conduct vote by polling at future virtual meetings. Ms. Friedenberg moved to conduct vote by polling of items

that need action during future virtual meetings. The motion was properly seconded. A roll call was taken and the motion was carried unanimously.

Discussion regarding the business meeting process:

The following were well received by Board Members:

- Consent Agenda Items were very helpful which made the meeting more efficient
- Appreciation of the report on the survey regarding the impact of COVID-19
- Appreciation for staff on the organization, logistic and preparation
- Login information and training provided were very helpful
- Thanked staff for tips regarding sending corrections of items on the agenda prior to meeting
- Meeting went very well

The following needs improvement per Board Members:

- Connection problem/technical difficulties
- A reminder to watch facial expressions
- A suggestion was made to send targeted communications to Education Programs regarding virtual meetings as students may want to attend

Ms. Willinger reported that no phone calls from the public regarding technical problems received.

ADJOURNMENT:

The Board adjourned at 12:48 P.M.

Jennifer Phelps, BS, LPN, QMHP-A, CSAC
President