

VIRGINIA BOARD OF NURSING
Disciplinary Committee Meeting
Final Agenda

Department of Health Professions – Perimeter Center
9960 Mayland Drive, Conference Center 201 – **Board Room 2**
Henrico, Virginia 23233

***DHP Mission** – the mission of the Department of Health Professions is to ensure safe and competent patient care by licensing health professionals, enforcing standards of practice, and providing information to health care practitioners and the public.*

Tuesday, March 21, 2023 – at 3:00 P.M. in Board Room 2

Committee Members:

James Hermansen-Parker, MSN, RN, PCCN-K - **Chair**
Meenakshi Shah, BA, RN

Staff Members:

Claire Morris, RN, LNHA; Deputy Executive Director
Christina Bargdill, BSN, MHS, RN; Deputy Executive Director
Robin Hills, DNP, WHNP-BC, RN; Deputy Executive Director for Advanced Practice

- ❖ ****Review of Guidance Document 90-41 (*Patient Abandonment by Care Providers*)**
- ❖ ****Review of Process/Regulation for CNAs petitioning for Reinstatement and Removal of Finding of Neglect (18VAC90-25-81)**

(* 1st mailing - 3/1) (** 2nd mailing – 3/8) (**3rd mailing – 3/15)

Virginia Board of Nursing

Patient Abandonment by Care Providers*

For the purposes of this guidance document, care providers* are persons licensed, certified or registered by the Board of Nursing, to include registered nurses, licensed practical nurses, certified nurse aides or registered medication aides.

The Board has received numerous inquiries regarding what constitutes patient abandonment and the imposition of mandatory overtime by employers. These inquiries usually are the result of situations encountered by care providers in relation to their work assignments. Patient abandonment is not defined in the Virginia Nurse Practice Act. For patient abandonment to be a violation of the Nurse Practice Act, it must be determined to “unprofessional conduct” (#2 of § 54.1-3007) or “practicing in a manner contrary to the standards of ethics or in such a manner as to make his practice a danger to the health and welfare of patients or to the public” (#5 of § 54.1-3007). The term abandonment is referred to in the Board regulations as a cause for discipline for nurses in 18 VAC 90-19-230, for certified nurse aides in 18 VAC 90-25-100, and for registered medication aides in 18VAC90-60-120.

Mandatory overtime usually refers to situations when the employer requires the care providers to remain on the job after the end of their scheduled work hours. It has also been imposed to require employees to come in to the workplace on unscheduled work days or hours. This is usually a result of staffing shortages at the facility. Care providers often ask if the employer can actually require them to remain on the job, and what will happen if they refuse to stay or come in to work. It is frequently reported that they have been told if they refuse to work, they will be fired, and reported to the Board for “patient abandonment.”

The term “patient abandonment” should be differentiated from the term “employment abandonment,” which becomes a matter of the employer-employee relationship and not that of the Board of Nursing. It should be noted that from a regulatory perspective, in order for patient abandonment to occur, the care provider must have first accepted the patient assignment and established a provider-patient relationship, then severed that provider-patient relationship without giving reasonable notice to the appropriate person (supervisor, employer) so that arrangements can be made for continuation of care by others. Providing appropriate personnel to care for patients is the responsibility of the employer. Failure of a care provider to work beyond his/her scheduled shift, refusal to accept an assignment, refusal to float to another unit, refusal to report to work, and resigning without notice, are examples of employment issues, and not considered by the Board to constitute patient abandonment.

The nurse manager/supervisor is accountable for assessing the capabilities of personnel in relationship to client needs and delegating or assigning care functions to qualified personnel. The nurse manager/supervisor’s responsibility also includes making judgments about situational factors (e.g., fatigue, lack of sleep, lack of orientation and

training to a particular unit) that would influence the provider's capability to deliver safe, effective care. The nurse manager should be aware that he/she could be subject to disciplinary action by the Board for assigning patient care responsibilities to staff when the manager knows, or should reasonably know, that the assignment may affect the competency of the care provider. Additionally, Joint Commission on Accreditation of Healthcare Organization Standards say that a nurse must be provided an orientation to the unit they are assigned, as well as training and credentialing in the specialized skills of the particular unit.

Care providers are accountable for the care they provide. Before accepting an assignment, it is most important that the provider have the knowledge, skills, and abilities to safely perform the tasks assigned. If a provider arrives for work and determines it would be unsafe to provide the care assigned, the provider should immediately contact the supervisor, explain him/her concerns, and request assistance in planning and providing safe, effective care based upon the available resources in the agency. Such assistance might include additional staff, additional assistance by other individuals for specific activities, prioritizing care or activities and notifying others regarding limitations to be imposed on providing optimal care delivery during the period of understaffing. Regardless of the staffing situation, when a care provider accepts an assignment, he/she will be held to the standard of delivering safe care, protecting patients from harm, monitoring client responses to medical and nursing interventions, communication with other professionals regarding patient status and accurate documentation for care that has been delivered.

To summarize, patient abandonment can only occur after the care provider has come on duty for the shift and accepted his/her assignment. If the care provider leaves the area of assignment during his/her tour of duty prior to the completion of the shift and without adequate notification to the immediate supervisor, it is possible the Board would consider taking disciplinary action. However, when a care provider refuses to remain on duty for an extra shift beyond his/her established schedule, it is not considered patient abandonment should the provider choose to leave at the end of the regular shift, provided he/she has appropriately notified the supervisor and reported off to another provider.

Adopted: March 20, 2001 (Initially authored by Shelley Conroy, RN, PhD)

Reviewed: November 18, 2003

Revised: September 11, 2012

Reaffirmed: March 19, 2019

Commonwealth of Virginia



REGULATIONS
GOVERNING CERTIFIED NURSE AIDES
VIRGINIA BOARD OF NURSING

Title of Regulations: 18 VAC 90-25-10 et seq.

**Statutory Authority: §§ 54.1-2400 and Chapter 30 of Title 54.1
of the *Code of Virginia***

Revised Date: February 6, 2020

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Part I. General Provisions.

18VAC90-25-10. Definitions.

The following words and terms when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise:

“Board” means the Virginia Board of Nursing.

“Client” means a person receiving the services of a certified nurse aide, to include a patient in a health care facility or at home or a resident of a long term care facility.

"Nurse aide education program" means a program designed to prepare nurse aides for certification that is approved by the board.

18VAC90-25-15. Identification; accuracy of records.

A. Any person regulated by this chapter who provides direct patient care shall, while on duty, wear identification that is clearly visible and indicates the appropriate title issued to such person by the board under which he is practicing in that setting. Name identification on a badge shall follow the policy of the facility in which the nurse aide is employed.

B. A certificate holder who has changed his name shall submit as legal proof to the board a copy of the marriage certificate, a certificate of naturalization, or court order evidencing the change. A duplicate certificate shall be issued by the board upon receipt of such evidence.

C. Each certificate holder shall maintain an address of record with the board. Any change in the address of record or in the public address, if different from the address of record, shall be submitted in writing or electronically to the board within 30 days of such change. All notices required by law and by this chapter to be sent by the board to any certificate holder shall be validly given when sent to the latest address of record on file with the board.

18VAC90-25-16. Fees.

A. The following fees shall apply:

1. Annual renewal for certified nurse aide	\$30
2. Handling fee for returned check or dishonored credit card or debit card	\$50
3. Application for certification as an advanced certified nurse aide	\$25
4. Renewal of advanced certified nurse aide certification	\$20
5. Reinstatement of advanced certified nurse aide certification	\$30

B. Fees shall not be refunded once submitted.

18VAC90-25-20. through 18VAC90-25-60. (Repealed.)

Part II. Certification of Nurse Aides.

18VAC90-25-70. Initial certification for the nurse aide registry.

A. The board shall issue a certificate as a certified nurse aide to each applicant who qualifies for such a certificate under §§54.1-3024, 54.1-3025, 54.1-3026 and 54.1-3028 of the Code of Virginia and provisions of this chapter.

B. Nurse aide competency evaluation.

1. The board may contract with a test service for the development and administration of a competency evaluation, which shall be a state examination.

2. All individuals completing a nurse aide education program in Virginia shall successfully complete the state examination required by the board prior to being certified and to using the title Certified Nurse Aide.

3. The board shall determine the minimum passing standard on the state examination.

C. Initial certification shall be for two years.

18VAC90-25-71. Certification by examination.

A. To be placed on the registry and certified by examination, the nurse aide must:

1. Have satisfactorily completed:

a. A nurse aide education program approved by the board; or

b. At least one clinical nursing course which includes at least 40 hours of clinical experience involving direct client care within the past 12 months while enrolled in a nursing education program preparing for registered nurse or practical nurse licensure; or

c. A nursing education program preparing for registered nurse licensure or practical nurse licensure; and

2. Pass the state examination required by the board; and

3. Submit the required application and testing fee as prescribed by the board.

B. An applicant who fails to take the board-approved skills and written portions of the state examination within two years of completion of the training or who has failed the examination in three attempts shall reenroll and successfully complete another approved nurse aide training program before reapplying.

18VAC90-25-72. Certification by endorsement.

To be placed on the registry and be certified by endorsement, the nurse aide shall:

1. Be a graduate of a state-approved nurse aide education program that meets the requirements for clinical training and competency set forth in 42 CFR 483.152;
2. Have satisfactorily completed a competency evaluation program;
3. Be currently registered in another state, with no finding of abuse, neglect or misappropriation of property;
4. Submit the required application; and
5. Submit the required verification form to the credentialing agency in each state in which the applicant has been registered, certified or licensed, unless electronic verification is available.

18VAC90-25-80. Renewal or reinstatement of certification.

A. Renewal of certification.

1. No less than 30 days prior to the expiration date of the current certification, a notice for renewal shall be sent by the board to the address of record of each currently certified nurse aide.
2. The certified nurse aide shall annually submit a completed renewal application with the required fee and attestation of performance of nursing-related activities for compensation within the two years immediately preceding the expiration date.
3. Failure to receive the application for renewal shall not relieve the certificate holder of the responsibility for renewing the certification by the expiration date.
4. A certified nurse aide who has not performed nursing-related activities for compensation during the two years preceding the expiration date of the certification shall repeat and pass the nurse aide state examination prior to applying for renewal of certification.

B. Reinstatement of certification.

1. An individual whose certification has lapsed for more than 90 days shall submit the required application and renewal fee and provide:
 - a. Verification of performance of nursing-related activities for compensation in the two years prior to the expiration date of the certificate and within the preceding two years; or
 - b. Evidence of having repeated and passed the nurse aide state examination.
2. An individual who has previously had a finding of abuse, neglect, or misappropriation of property is not eligible for reinstatement of his certification, except as provided in 18VAC90-25-81, which provides a process for removal of the finding of neglect based on a single occurrence.

C. A certified nurse aide whose certification has been suspended or revoked by the board and who is eligible for reinstatement may apply for reinstatement by filing a reinstatement application and fulfilling requirements of subsection B of this section.

18VAC90-25-81. Removal of a finding of neglect.

A. If a finding of neglect was made against a certificate holder based on a single occurrence, an individual may petition for removal of the finding of neglect provided:

1. A period of at least one year has passed since the finding was made; and
2. The individual demonstrates sufficient evidence that employment and personal history do not reflect a pattern of abusive behavior or neglect.

B. A certificate holder can petition the board only once for removal of a finding of neglect.

18VAC90-25-90. (Repealed.)

18VAC90-25-100. Disciplinary provisions for nurse aides.

The board has the authority to deny, revoke or suspend a certificate issued, or to otherwise discipline a certificate holder upon proof that the certificate holder has violated any of the provisions of §54.1-3007 of the Code of Virginia. For the purpose of establishing allegations to be included in the notice of hearing, the board has adopted the following definitions:

1. Fraud or deceit in order to procure or maintain a certificate shall mean, but shall not be limited to:
 - a. Filing false credentials;
 - b. Falsely representing facts on an application for initial certification, reinstatement or renewal of a certificate; or
 - c. Giving or receiving assistance in taking the state examination.
2. Unprofessional conduct shall mean, but shall not be limited to:
 - a. Performing acts beyond those authorized for practice as a nurse aide or an advanced certified nurse aide as defined in Chapter 30 (§54.1-3000 et seq.) of Title 54.1 of the Code of Virginia, and beyond those authorized by the Drug Control Act (§ 54.1-3400 et seq.) or by provisions for delegation of nursing tasks in VI (18VAC90-19-240 et seq.) of 18VAC90-19.
 - b. Assuming duties and responsibilities within the practice of a nurse aide or an advanced certified nurse aide without adequate training or when competency has not been maintained;
 - c. Obtaining supplies, equipment or drugs for personal or other unauthorized use;
 - d. Falsifying or otherwise altering client or employer records, including falsely representing facts on a job application or other employment-related documents;

- e. Abusing, neglecting or abandoning clients; or
 - f. Having been denied a license or certificate or having had a license or certificate issued by the board revoked or suspended.
 - g. Giving to or accepting from a client property or money for any reason other than fee for service or a nominal token of appreciation;
 - h. Obtaining money or property of a client by fraud, misrepresentation or duress;
 - i. Entering into a relationship with a client or a client's family that constitutes a professional boundary violation in which the nurse aide uses his professional position to take advantage of the vulnerability of a client or his family, to include actions that result in personal gain at the expense of the client, an inappropriate personal involvement or sexual conduct with a client;
 - j. Violating state laws relating to the privacy of client information, including § 32.1-127.1:03 of the Code of Virginia; or
 - k. Providing false information to staff or board members during the course of an investigation or proceeding.
3. For the purposes of interpreting provisions of subdivision 7 of § 54.1-3007 of the Code of Virginia, a restriction on nurse aide certification shall be interpreted as having a finding of abuse, neglect or misappropriation of patient property made in another state or being placed on the abuse registry in another state.

Part III. Advanced Certification.

18VAC90-25-110. Requirements for initial certification as an advanced certified nurse aide.

- A. In order to be certified as and use the title of "Advanced Certified Nurse Aide," an applicant shall meet the following qualifications:
- 1. Hold current certification as a certified nurse aide in Virginia;
 - 2. Have been certified for at least three years as a certified nurse aide;
 - 3. Have never had a finding of abuse, neglect or misappropriation of patient property entered on a nurse aide registry in any jurisdiction and have not had any disciplinary actions taken by the board within the five years preceding application for advanced certification;
 - 4. Have a recommendation for advanced certification from a licensed nurse who has supervised the applicant in providing direct patient care for at least six months within the past year; and
 - 5. Have successfully completed a minimum of 120 hours of advanced training in an approved program that includes a competency evaluation acceptable to the board.

B. An application for certification shall be accompanied by an application fee as specified in 18VAC90-25-16.

18VAC90-25-120. Renewal and reinstatement of certification as an advanced certified nurse aide.

A. Current certification as a nurse aide in Virginia must be maintained in order to hold certification as an advanced certified nurse aide.

B. Renewal. If an individual is not eligible to renew as a certified nurse aide, certification as an advanced certified nurse aide may not be renewed. An advanced certification shall be renewed concurrently with the renewal of the basic certification as a nurse aide in Virginia by:

1. Submitting a completed renewal form and renewal fee as specified in 18VAC90-25-16; and
2. Attesting to completion of at least three contact hours per year of continuing education and training in any of the competency areas identified in the advanced certification training program. The board may grant an extension or waiver of the continuing education requirement based on good cause shown by the certified nurse aide.

C. Late renewal. An advanced certified nurse aide may renew certification for 90 days following the expiration date by meeting the requirements of subsection A of this section.

D. Reinstatement. If an advanced certification has not been renewed for 90 days following the expiration date, it shall only be reinstated if the applicant for reinstatement: Reinstatement. If an advanced certification has not been renewed for 90 days following the expiration date, it shall only be reinstated if the applicant for reinstatement:

1. Holds current certification as a nurse aide in Virginia;
2. Submits a completed reinstatement application on a form provided by the board;
3. Pays the reinstatement fee as specified in 18VAC90-25-16; and
4. Provides evidence that the applicant has completed all required hours of continuing education and training.

18VAC90-25-130. (Repealed.)

18VAC90-25-140. (Repealed.)