

**MINUTES OF THE MEETING  
of the NEBRASKA  
BOARD OF NURSING**

**October 10, 2019**

**CALL TO ORDER**

The meeting of the Nebraska Board of Nursing was called to order by Patricia Motl, Board President, at 8:37 a.m., October 10, 2019, at Best Western Plus Lincoln Inn and Suites, Lincoln NE 68521. Copies of the agenda were mailed in advance to the Board members, emailed to interested parties, posted outside the Licensure Unit within the Nebraska State Office Building, and posted on the Department of Health & Human Services website. Motl announced the location of an available copy of the Open Meetings Act within the room.

**ROLL CALL**

The following board members were present to answer roll call:

- Janet Andrew, LPN, *Board Vice-President*
- Anne Dey, RN
- Louise LaFramboise, RN
- Patricia Motl, RN, *Board President*
- Kristin Ruiz, RN
- Linda Stones, RN
- Rita Thalken, *Public Member*
- Katherine Werth, APRN-NP

The following Board members arrived after roll call: Kristene Perrin, RN, (arrived at 10:53 a.m.) and Tag Herbek, *Public Member*, (arrived at 12:30 p.m.).

The following Board members were absent: Angela Cuffe, LPN, and Karen Weidner, RN, *Board Secretary*

The following staff members from the Department and the Attorney General's Office were also present during all or part of the meeting:

- Ann Oertwich, RN, *Executive Director*
- Sherri Joyner, *Health Licensing Coordinator*
- Jacci Reznicek, RN, *Nursing Education Consultant*
- Kathy Hoebelheinrich, RN, *Nursing Practice Consultant*
- Anna Harrison, *Compliance Monitor*
- Becky Wisell, *DHHS Licensure Unit Administrator* (arrived at 2:03 p.m.)
- Juan Ramirez, *DHHS Contractor* (arrived at 1:00 p.m.)
- Lisa Anderson, *Assistant Attorney General*
- Ami Huff, *Assistant Attorney General*
- Jessica Bowman, *Investigator*
- Sharon Fitts, *Investigator*
- Patricia Lemke, *Investigator*
- Sherri Lovelace, *Investigator*

Also present was Michelle Hruska of the Nebraska Licensee Assistance Program (arrived at 1:10 p.m.).

A quorum was present, and the meeting convened.

**ADOPTION OF THE AGENDA**

**MOTION:** Andrew made the motion, seconded by Ruiz, to adopt the agenda for the October 10, 2019, Board of Nursing meeting.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None. Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

These minutes were approved by the Board  
of Nursing on November 14, 2019.

**APPROVAL OF THE MINUTES**

**MOTION:** Andrew made the motion, seconded by Ruiz, to approve the consent agenda.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None.  
Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

**CLOSED SESSION**

**MOTION:** Andrew made the motion, seconded by Ruiz, for the Board to go into closed session for the purpose of reviewing and discussing investigative reports, licensure applications, and other confidential information, and for the prevention of needless injury to the reputation of the individuals.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None.  
Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

8:45 a.m. Meeting went into closed session.  
9:35 a.m. Stones left the meeting.  
9:38 a.m. Stones returned to the meeting.  
9:50 a.m. Andrew left the meeting.  
9:55 a.m. Andrew returned to the meeting.  
10:08 a.m. Meeting went into recess.  
10:16 a.m. Meeting reconvened.  
10:32 a.m. Meeting returned to Open Session.

**LICENSURE RECOMMENDATIONS****ASHLEY L. BAUMGART – RN APPLICANT**

**MOTION:** Dey made the motion, seconded by Werth, to recommend issuing Ashley Baumgart an unrestricted RN license.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None.  
Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

**JULIE A. ESPENHOVER– RN APPLICANT**

**MOTION:** Stones made the motion, seconded by Dey, to request a pre-licensure investigation in order to make a more informed decision.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None.  
Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

**EDUCATION COMMITTEE**

The Education Committee moved that the Board of Nursing Approve Nebraska Methodist College BSN Organizational Framework and the following BSN Courses: NRS 105 Professionalism in Nursing; NRS 110 Health Assessment across the Lifespan; NRS 201 Public Health Science; and NRS 301 Health Care Policy.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None.  
Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

**PRACTICE COMMITTEE**

The Practice Committee moved that the Board of Nursing approve the revised *Safety to Practice: Fitness to Practice* Advisory Opinion and rename the Opinion to *Safe Practice: Fitness to Practice*.

Voting Yes: Andrew, Dey, LaFramboise, Motl, Ruiz, Stones, Thalken, and Werth. Voting No: None. Abstain: None. Absent: Cuffe, Herbek, Perrin, and Weidner. Motion carried.

## **PROPOSED NURSING REGULATIONS**

Oertwich reported that Board approval of the amended Chapter 101 (Practice of Nursing) will need to be delayed because the recording for the hearing was damaged. Another hearing will need to be scheduled, and because the Department is required to give 30-days' notice of for the hearings, the Board will not likely be able to approve the Certificate of Adoption until December. At the hearing for Chapter 101 that was held on October 3, 2019, Oertwich reported that the only speaker was Liz Lyon from Children's Hospital, who reported concerns that the draft Chapter 101 had no references to the Nurse Licensure Compact and that the English proficiency guidelines might be too stringent. Oertwich said that the draft of Chapter 101 does not contain references to the Nurse Licensure Compact because the Compact is covered in statute. Reznicek confirmed that the passing scores listed in the amended Chapter 101 for English proficiency exams are based on standards published by the National Council of State Boards of Nursing (NCSBN).

Oertwich reported that the Nebraska Medical Association (NMA) provided testimony at the hearing on the APRN regulations (Chapters 98, 100, 103, 104, and 107). The NMA's testimony suggested that by combining the regulations for the four APRN roles into one chapter, the proposed changes were trying to accomplish the same thing that LB730 proposed to do, which the NMA said raised concerns that the Department was trying to override the legislative process.

Oertwich reported that guidance documents will be prepared for each profession. Guidance documents will include items of an advisory nature that are being removed from the chapters because they are not strictly of a regulatory nature. Anderson noted that the guidance document concept might make enforcement more difficult. She also noted that some items in the draft regulations, such as the lack of tables of contents, might create problems for the Attorney General's Office.

Oertwich said that the Board does not need to approve Certificates of Adoption for the nursing loan regulations (183 NAC 5 and 183 NAC 6) because these regulations contain no references to the Board of Nursing.

Oertwich said that the Board cannot approve Certificates of Adoption for the amended Chapter 99 (Provision of Nursing Care) and the repeal of Chapter 102 (LPN-C Statutes) until they find out if any written comments from the public have been received. No verbal comments on Chapters 99 and 102 were made at the October 8<sup>th</sup> hearings.

*10:53 a.m. Perrin arrived at the meeting.*

Hoebelheinrich reported that DHHS has an online video that Nurse Practitioners and Certified Nurse Midwives can use to meet the Prescription Drug Monitoring Program (PDMP) education requirement that was passed by the Legislature in 2018. Although the video meets the PDMP education requirement, it is not approved as peer-reviewed continuing education for nurses. Hoebelheinrich also noted that legislation passed in 2018 also requires practitioners to discuss addiction and overdose risks with patients when they prescribe opiates. Hoebelheinrich said that there is talk of expanding this bill so that nurses can provide the education to patients.

## **COMMUNICATION**

LPN Renewals – Oertwich reported that approximately one-half of LPNs licensed in Nebraska have already renewed their licenses prior to the October 31<sup>st</sup> expiration date. Oertwich added that LPNs will have one more renewal cycle before they need to show completion of an eight-hour IV course in order to keep their licenses active. Reznicek said that based on calls she has received, some LPNs mistakenly think that they will be required to take a test on IV therapy in order to keep their licenses active. All they actually need to do is take an eight-hour course, which can also be used to fulfill part of the continuing education required for renewal.

Nursing News – Oertwich reported that staff have received numerous calls in response to the article in the most recent *Nursing News* about CBD-containing products. People mistakenly think that recent legislation that legalized the growing of hemp in Nebraska also legalized the sale of CBD oil.

Dey and LaFramboise suggested focusing a future issue of *Nursing News* on diversity and cultural competency. Oertwich said that staff will probably need to do some research to find appropriate articles.

Staff Updates – Oertwich reported that she is conducting interviews for the vacant Health Licensing Specialist position.

Motl reported that she attended the NCSBN's Leadership and Public Policy Conference. Topics covered included the roles nurses can play in the political process to protect public health, including protecting access to clean water and food, the importance of establishing relationships with legislators, and how to negotiate effectively with lawmakers. Motl said that she has taken on a project to identify the legislators and groups in Nebraska that nurses can call on to build consensus and promote nursing in Nebraska.

11:19 a.m.      *Ruiz left the meeting.*

Oertwich noted that there is a trend towards national or even global licensure initiatives. Other professions, such as physician assistants, are gearing up to introduce licensure compacts. There is also the possibility that Guam might join the Nurse Licensing Compact, making it the first U.S. territory to do so. Canadian provinces, with the exception of Quebec, are standardizing their nursing curricula, and they are beginning to develop a Canadian version of Nursys.

11:40 p.m.      *Meeting went into recess.*

12:30 p.m.      *Herbek arrived at the meeting.*

1:10 p.m.      *Meeting reconvened*

## **ISSUES FORUM – DISCIPLINARY GUIDELINES**

Ramirez and Harrison presented data on licensees in Nebraska with disciplinary actions. Data covered the 2012-2019 timeframe and included all professions with boards administered by the Licensure Unit. Between 2012 and 2017, for LPNs who experienced a relapse after being placed on probation, the average number of days from probation start date to first relapse was 416.0 days. For RNs the average was 392.5 days. Between 2017 and 2019, the average number of days to first relapse was 220.5 for LPNs and 334.1 for RNs.

Oertwich suggested that the board identify various factors that could play a role in determining length of probation. The board could then formulate consistent recommendations based on these data points or factors. Identified categories included: active user, sobriety date, treatment obtained (inpatient, outpatient, court-ordered, voluntary), diagnosis, substance (alcohol, meth, etc.), diversion, person's drug history, impaired practice, and co-morbidity with a mental health disorder.

Hruska identified the following as the primary factors affecting sobriety:

- Diagnosis.
- Sobriety date. Hruska noted that there are two types of sobriety dates – the date the person stops using (which might be the result of monitoring) and the date the person accepts that he or she has a disease.
- Treatment history.
- Why has the person been sober? Has their sobriety, for example, been maintained primarily while they were incarcerated or in another controlled environment?
- Is the person actively engaged in activities to maintain sobriety? Hruska said that in her experience people who engage in structured activities, such as going to support group meetings or attending church, are less likely to relapse and may be better candidates for probation. Hruska

said that a person who is a “dry drunk,” i.e. he or she no longer drinks but has not made any other life changes, might not be ready for probation.

- In cases of co-morbidity, has the person address any underlying mental health conditions?  
Hruska noted that she is not able to recommend mental health counseling, but that she has seen cases where addiction is a way to avoid addressing an underlying trauma.

LaFramboise asked if the Board would determine the length of probation terms based on the sobriety date or the date the Board reviewed the case. Members noted that the disciplinary data they just viewed measured relapse rate from the date the probation started rather than from the sobriety date.

LaFramboise asked about the reasons why a licensee who is facing possible discipline due to a substance use disorder would not access treatment. Hruska said that some people say that they cannot afford the financial cost of treatment or they cannot take time off from work. Some people say they will just wait and see what the board does. Hruska said this response is typical of the addiction process and is a sign that the person is not yet willing to change.

Motl asked if there are differences in recovery based on the substance that was abused. Hruska said that recovery generally follows the same path. She did note that the use of illegal substances can often have a bigger impact on people due to criminal charges and limits on the settings in which they can work.

Oertwich asked how mild, moderate, and severe diagnoses correlated with relapse. Hruska said that a person with a mild diagnosis should not find it difficult to abstain during the probation period. She did not expect there to be much difference in relapse rates between those with moderate and severe diagnoses, although a person with a severe diagnosis would be more likely to have a longer binge when they relapsed than a person with a moderate diagnosis. Hruska noted that when persons with severe diagnoses were actively using, they built up tolerance to the substance. If they relapse and resume consuming their usual quantity, they can suffer alcohol poisoning or other severe consequences.

Werth asked about evaluations in which no diagnosis is given, and whether the lack of diagnosis is because the person does not meet the criteria for a diagnosis or because there is simply not enough evidence. Hruska said that there are times when people do not provide enough information. She is especially cautious when people do not allow her to speak with a significant other to obtain collateral information. At other times, however, a person may have simply made a big mistake, such as choosing to drink and drive, and legitimately does not have a diagnosis.

Wisell noted that many boards began recommending five-year probation terms following an all-board meeting at which a presenter endorsed the effectiveness five-year terms in cases of moderate and severe substance use disorders. Wisell said that it is appropriate to re-evaluate the five-year benchmark now that the Department has data on relapse rates for Nebraska licensees. She said that boards and the Department need to balance public safety versus creating undue hardships for licensees. Wisell noted the body fluid screens can be a significant burden for some licensees. Wisell said that she did not know if three-year probation terms should become the new benchmark, but that five years seemed overly restrictive except in cases where the licensee has not taken responsibility for the addiction.

Anderson noted that a lack of consistency in board recommendations can make it more difficult to impose disciplinary action. Having a benchmark for probation terms would be helpful when cases go to hearing or are appealed in district court.

LaFramboise asked if it would be possible to hold another all-board meeting. Wisell said that it was possible. Anderson said that an all-board meeting would be a good opportunity to introduce Dr. Anthone, the new Chief Medical Officer, to the boards.

Anderson said that she did not think that probation terms should vary among the different professions, although probation conditions should. LaFramboise noted that the implications of impaired practice vary

among different professions. LaFramboise said it would be helpful to have information on how other boards make their recommendations.

Members discussed various mechanisms that might be used to determine discipline recommendations. In cases where the licensee is still actively using, the license should be revoked or suspended. To determine probation terms, members suggested using a matrix, point system, or a decision-making model. Stones said that she would like a history of impaired practice to weigh heavily in the recommendation because of the threat to public safety. Oertwich said she would draft a matrix or decision-making model that the Board could discuss at its November meeting.

Hruska said that people with substance use disorders are more likely to succeed if they feel accountable to another person. When licensees express that their probation conditions feel like punishment, Hruska tells them that if they are truly in recovery, the length of the probation period should not matter. Formerly, the Licensee Assistance Program would stop monitoring persons if their licenses became suspended. Hruska said they now will continue monitoring these individuals based on the importance of accountability in the recovery process.

### **CONCLUSION AND ADJOURNMENT**

There being no further business, the meeting adjourned at 3:00 p.m.

Respectfully submitted,



Sherri Joyner  
Health Licensing Coordinator