

MINUTES

North Carolina Medical Board

June 21-22, 2012

**1203 Front Street
Raleigh, North Carolina**

The North Carolina Medical Board held its regularly scheduled June 2012 meeting at the Board's office located at 1203 Front Street, Raleigh, NC 27609. William A. Walker, MD, President-Elect, called the meeting to order on Thursday June 21, 2012, at 9:00 a.m. Board members participating were: Janice E. Huff, MD, Past President; Thomas R. Hill, MD; John B. Lewis, Jr., LLB; Eleanor E. Greene, MD; Peggy R. Robinson, PA-C; Ms. Pamela Blizzard; and Ms. Thelma Lennon. Independent Counsel: Judge Fred Morelock. Also attending were Fred Morelock, Independent Legal Counsel to the Board; R. David Henderson, Executive Director and Thom Mansfield, Board Attorney. Ralph C. Loomis, MD, President participated on Friday, June 22, 2012.

Presidential Remarks:

Dr. Walker commenced the meeting by reminding the Board members of their duty to avoid conflicts of interest with respect to any matters coming before the Board as required by the State Government Ethics Act. No conflicts were reported at that time, however Dr. Loomis previously had recused in the matter of Dr. Sunderhaus and did not participate in the hearing in that matter on June 21, 2012.

Hearings:

Sunderhaus, Earl, MD – Asheville, NC

The Board was represented by Mr. Todd Brosius. Dr. Sunderhaus was not represented by counsel, but was present. Dr. Loomis was recused from the hearing.

Dr. Sunderhaus was charged with immoral and dishonorable conduct within the meaning of N.C. Gen. Stat. § 90-14(a)(1); unprofessional conduct with the meaning of N.C. Gen. Stat. § 90-14(a)(6) and failure to respond to Board inquiries.

Following the hearing, the Board found that Dr. Sunderhaus:

1. Did commit unprofessional conduct within the meaning of N.C. Gen. Stat. §90-14(a)(6), in his conduct with regard to Persons A and B;
2. Did commit immoral or dishonorable conduct within the meaning of N.C. Gen. Stat. §90-14(a)(1), in his conduct with regard to Persons A and B;
3. Did commit unprofessional conduct with the meaning of N.C. Gen. Stat. §90-14(a)(6), in his communications with the Board and its staff during the course of its investigation and during the litigation of the matter; and
4. Did fail to respond, within a reasonable period of time and in a reasonable manner to inquiries from the Board concerning any matter affecting his license to practice medicine.

The Board voted to indefinitely suspend Dr. Sunderhaus' medical license. The suspension will begin 60 days after the final action is entered to allow Dr. Sunderhaus to provide written notice to his patients and staff. He may not reapply for reinstatement for at least one year. Prior to consideration of any application, he must complete the CPEP ProBE course, undergo a complete neurologic evaluation including MRI and audiologic testing, and must complete a neuropsychiatric evaluation by Dr. Mark Hill.

Powell, Eddie, MD – Roseboro, NC

The Board was represented by Mr. Todd Brosius. Dr. Powell was represented by Mr. James Ferguson.

Dr. Powell was charged with failure to comply with a Board Order.

Dr. Loomis granted a Motion to Continue filed by Mr. Ferguson. The hearing will be conducted at a later date.

Doebler, William, MD – Bonita Springs, FL

The Board was represented by Mr. Marcus Jimison. Dr. Doebler was not present and was not represented by counsel.

Dr. Doebler was charged with having his license to practice medicine restricted or acted against by the licensing authority of any jurisdiction within the meaning of N.C. Gen. Stat. § 90-14(a)(13).

Following the hearing, the Board voted to accept Mr. Jimison's recommendation to mirror the New York Board's action of a Reprimand and Probation. Also, the Board will impose a \$1000 fine based on non-disclosure on his annual renewal with the North Carolina Medical Board.

PROPOSED SETTLEMENTS:

Shutak, Michael, PA – Morehead City, NC

The Board was represented by Mr. Patrick Balestrieri. Mr. Shutak was not present, but he was represented by Mr. Mike Allen.

The Board accepted the proposed Consent Order.

Urban, Edward, DO – Asheville, NC

The Board was represented by Mr. Brian Blankenship. Dr. Urban was not present, but he was represented by Mr. Alan Schneider.

The Board accepted the proposed Consent Order.

ATTORNEY'S REPORT:

A motion passed to close the session pursuant to Section 143-318.11(a) of the North Carolina General Statutes to prevent the disclosure of information that is confidential pursuant to Sections 90-8, 90-14, 90-16, 90-21.22 of the North Carolina General Statutes and not considered a public record within the meaning of Chapter 132 of the General Statutes and/or to preserve attorney/client privilege.

A written report on 96 pending cases and 75 executed cases was presented for the Board's review. The specifics of these matters are not included as they are non-public. The Board accepted the report as presented.

A motion was passed to return to open session.

The following actions were executed since the Board's last regularly scheduled meeting. The Board voted to accept these as information.

Executed Cases:

Public Actions:

Arnold, Gordon Bruce MD
Consent Order executed 04/20/2012

Barr, John Findley MD
Notice of Charges & Allegations; Notice of Hearing and Scheduling Order executed 6/7/12

Calogero, Thomas John MD
Consent Order executed 4/20/12

Chavis, Robert Michal PA
Order for Relief of Obligations executed 4/19/12

Cona, Costantino Dino MD
Order of Discipline executed 4/24/12

Dunn, Jack MD
Non-Disciplinary Consent Order executed 5/17/12

Dyer, G. David
Notice of Revocation executed 6/7/12

Ellis, Rickie Wade RTL
Order for Partial Relief of Obligations executed 4/19/12

Evans, Michael Allen MD
Consent Order executed 6/18/12

Fantauzzi, Mark Rudolph MD
Consent Order executed 5/4/12

Foster, James William MD
Public Letter of Concern executed 05/10/2012

Gaffney, Mary Elizabeth MD
Consent Order executed 4/19/12

Gilmer-Scott, Melissa Danielle MD
Order for Relief of Consent Order Obligations and Interim Letter of Concern executed 04/20/2012

Gosey, Michael Louis MD
Re-Entry Agreement executed 04/30/2012

Guarino, Clinton Toms Andrews MD
Amended Consent Order and Reentry and Remediation Agreement executed 06/18/2012

Haddon, Werner Scott MD
Entry of Revocation executed 4/23/12

Hawkins, Kay Frances Lawhon MD
Re-Entry Agreement executed 05/03/2012

Haynes, Gregory Delano MD
Notice of Charges & Allegations; Notice of Hearing and Scheduling Order executed 5/24/12

Heider, Timothy Ryan MD
Public Letter of Concern executed 6/11/12

Lancaster, David Steven MD
Public Letter of Concern executed 4/30/12

Lilly, Josiah Kenneth MD
Public Letter of Concern executed 06/07/2012

Lithman, Jerry Richard
Order for Partial Summary Suspension of License executed 6/4/12

Little, Heidi Jo
Denial of Licensure executed 04/11/2012

Massey, Michael Donahue MD
Public Letter of Concern executed 6/4/12

Mauterer, David John MD
Findings of Fact, Conclusion of Law, and Order of Discipline executed 5/10/12.

Nutting, William Gardiner
Notice of Charges & Allegations; Notice of Hearing executed 4/30/12

Oddono, Ernest John
Order for Relief of Obligations executed 6/14/12

Parikh, Himanshu Pravinchandra MD
Consent Order executed 05/01/2012

Plemmons, Ronald Lawrence MD
Consent Order executed 6/4/12

Purcell, Valerie Doggett MD
Re-Entry Agreement executed 04/23/2012

Russell, Anthony Otis MD
Findings of Fact, Conclusions of Law, and Order of Discipline executed 5/14/12

Scheutzw, Mark Howard MD
Consent Order and Re-Entry Agreement executed 05/08/2012

Schmoke, Raymond Edward Frank MD
Public Letter of Concern executed 05/24/2012

Shannon, William Bartholomew MD
Non-Disciplinary Consent Order executed 6/11/12

Sherrod, William Maxwell MD
Public Letter of Concern executed 4/17/12

Skotnicki, Robert Alan MD
Public Letter of Concern executed 05/02/2012

Smith, Bryan D., MD
Consent Order executed 6/20/2012

Snow, Douglas Hardy
Public Letter of Concern executed 4/20/12

Stacey, Laurel Susan PA
Reentry Agreement executed 5/14/12

Therriault, Joseph Herman
Consent and Waiver and PUBLOC executed 5/10/12

Thompson, David Stuart MD
Consent Order executed 5/31/12

Turyan, Hach Vladimir
Denial of Licensure executed 05/25/2012

Vigue, Jason Todd MD
Consent Order executed 6/7/12

Vogelsang, Glenn David
Public Letter of Concern executed 06/19/2012

Weber, Jeffrey Alan PA
Relief of Consent Order Obligations executed 04/23/2012

Welsh, Mark Allen MD
C&W/Public Letter of Concern executed 5/29/12

Williams, James Dewey MD
Public Letter of Concern executed 4/30/12

Wrenn, Cynthia Helen PA
Consent Order executed 5/29/12

York, David Allan

Entry of Revocation executed 5/29/12

Zeller, Kathleen Elizabeth MD

Order for Relief of Obligations executed 6/14/12

Legislative Update:

Mr. Mansfield updated the Board on Legislative activity regarding HB614, SB467 and HB522. This was for information only and there was no action taken by the Board.

Midwifery Joint Subcommittee Update:

Mr. Henderson reported to the Board that the Midwifery Joint Subcommittee implemented an emergency rule allowing midwives who unexpectedly lose their supervising physician to continue practicing for 30 to 60 days. The temporary rule will expire on August 17, 2012 unless the Midwifery Joint Subcommittee files with the Rules Review Commission for a permanent rule.

Rule changes for final approval:

A notice of the following rules was published in the North Carolina Register: Volume 26, Issue 20 indicating the Board's intention to amend the rules. A public hearing will be held on June 15, 2012. No comments were received during the public hearing or by mail or e-mail.

The Board voted to adopt the following rule amendments. The rules will be filed with the Rules Review Commission for approval.

21 NCAC 32M .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Medical Board" means the North Carolina Medical Board.
- (2) "Board of Nursing" means the North Carolina Board of Nursing.
- (3) "Joint Subcommittee" means the subcommittee composed of members of the Board of Nursing and members of the Medical Board to whom responsibility is given by G.S. 90-8.2 and G.S. 90-171.23(b)(14) to develop rules to govern the performance of medical acts by nurse practitioners in North Carolina.
- (4) "Nurse Practitioner" or "NP" means a currently licensed registered nurse approved to perform medical acts consistent with the nurse's area of nurse practitioner academic educational preparation and national certification under an agreement with a licensed physician for ongoing supervision, consultation, collaboration and evaluation of medical acts performed. Such medical acts are in addition to those nursing acts performed by virtue of registered nurse (RN) licensure. The NP is held accountable under the RN license for those nursing acts that he or she may perform.
- (5) "Registration" means authorization by the Medical Board and the Board of Nursing for a registered nurse to use the title nurse practitioner in accordance with this Subchapter.
- (6) "Approval to Practice" means authorization by the Medical Board and the Board of Nursing for a nurse practitioner to perform medical acts within her or his area of educational preparation and certification under a collaborative practice agreement (CPA) with a licensed physician in accordance with this Subchapter.

- (7) "Supervision" means the physician's function of overseeing medical acts performed by the nurse practitioner.
- (8) "Collaborative practice agreement" means the arrangement for nurse practitioner-physician continuous availability to each other for ongoing supervision, consultation, collaboration, referral and evaluation of care provided by the nurse practitioner.
- (9) "Primary Supervising Physician" means the licensed physician ~~who, by signing the nurse practitioner application,~~ who shall provide on-going supervision, collaboration, consultation and evaluation of the medical acts performed by the nurse practitioner as defined in the collaborative practice agreement. Supervision shall be in compliance with the following:
- (a) The primary supervising physician shall assure both Boards that the nurse practitioner is qualified to perform those medical acts described in the collaborative practice agreement.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a primary supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation may supervise a nurse practitioner in the non-training situation.
- (10) "Back-up Supervising Physician" means the licensed physician who, by signing an agreement with the nurse practitioner and the primary supervising physician(s), shall provide supervision, collaboration, consultation and evaluation of medical acts by the nurse practitioner in accordance with the collaborative practice agreement when the Primary Supervising Physician is not available. Back-up supervision shall be in compliance with the following:
- (a) The signed and dated agreements for each back-up supervising physician(s) shall be maintained at each practice site.
 - (b) A physician in a graduate medical education program, whether fully licensed or holding only a resident's training license, shall not be named as a back-up supervising physician.
 - (c) A fully licensed physician in a graduate medical education program who is also practicing in a non-training situation and has a signed collaborative practice agreement with the nurse practitioner and the primary supervising physician may be a back-up supervising physician for a nurse practitioner in the non-training situation.
- (11) "Volunteer Approval" means approval to practice consistent with this Subchapter except without expectation of direct or indirect compensation or payment (monetary, in kind or otherwise) to the nurse practitioner.
- (12) "Disaster" means a state of disaster as defined in G.S. 166A-4(1a) and proclaimed by the Governor, or by the General Assembly pursuant to G.S. 166A-6.
- (13) "National Credentialing Body" means one of the following credentialing bodies that offers certification and re-certification in the nurse practitioner's specialty area of practice: American Nurses Credentialing Center (ANCC); American Academy of Nurse Practitioners (AANP); American Association of Critical Care Nurses Certification Corporation (AACN); National Certification Corporation of the Obstetric, Gynecologic and Neonatal Nursing Specialties (NCC); and the Pediatric Nursing Certification Board (PNCB).

History Note: Authority G. S. 90-8.1; 90-8.2; 90-18(c)(14); 90-18.2;
Eff. January 1, 1991;
Amended Eff. August 1, 2012; December 1, 2009; December 1, 2006; August 1, 2004; May 1,
1999; January 1, 1996.

21 NCAC 32M .0103 NURSE PRACTITIONER REGISTRATION

- (a) The Board of Nursing shall register an applicant who:
- (1) has an unrestricted license to practice as a registered nurse in North Carolina and, when applicable, an unrestricted approval, registration or license as a nurse practitioner in another state, territory, or possession of the United States;
 - (2) has successfully completed a nurse practitioner education program as outlined in Rule .0105 of this Subchapter;
 - (3) is certified as a nurse practitioner by a national credentialing body consistent with 21 NCAC 36 ~~.0120(7) and (9)~~; 36 .0801(13); and
 - (4) has supplied additional information necessary to evaluate the application as requested.
- (b) Beginning January 1, 2005, new graduates of a nurse practitioner program, who are seeking first-time nurse practitioner registration in North Carolina shall:
- (1) hold a Master's or higher degree in Nursing or related field with primary focus on Nursing;
 - (2) have successfully completed a graduate level nurse practitioner education program accredited by a national accrediting body; and
 - (3) provide documentation of certification by a national credentialing body.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.36;
Eff. August 1, 2004;
Amended Eff. August 1, 2012; November 1, 2008; December 1, 2006.

21 NCAC 32M .0104 PROCESS FOR APPROVAL TO PRACTICE

- (a) Prior to the performance of any medical acts, a nurse practitioner shall:
- (1) meet registration requirements as specified in 21 NCAC 32M .0103 of this Section;
 - (2) submit an application for approval to practice;
 - (3) submit any additional information necessary to evaluate the application as requested; and
 - (4) have a collaborative practice agreement with a primary supervising physician.
- (b) A nurse practitioner seeking approval to practice who has not practiced as a nurse practitioner in more than ~~five~~ two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and their management directly related to the nurse practitioner's area of education and certification.
- (c) The nurse practitioner shall not practice until notification of approval to practice is received from the Board of Nursing after both Boards have approved the application.
- (d) The nurse practitioner's approval to practice is terminated when the nurse practitioner discontinues working within the approved nurse practitioner collaborative practice agreement and the nurse practitioner shall notify the

Board of Nursing in writing. The Boards may extend the nurse practitioner's approval to practice in cases of emergency such as sudden injury, illness or death of the primary supervising physician.

(e) Applications for approval to practice in North Carolina shall be submitted to the Board of Nursing and then approved by both Boards as follows:

- (1) the Board of Nursing shall verify compliance with Rule .0103 of this Subchapter and Paragraph (a) of this Rule; and
- (2) the Medical Board shall verify that the designated primary supervising physician holds a valid license to practice medicine in North Carolina and compliance with Subparagraph (a) of this Rule.

(f) Applications for approval of changes in practice arrangements for a nurse practitioner currently approved to practice in North Carolina:

- (1) addition or change of primary supervising physician shall be submitted to the Board of Nursing and proceed pursuant to protocols developed by both Boards; and
- (2) request for change(s) in the scope of practice shall be submitted to the Joint Subcommittee.

(g) A registered nurse who was previously approved to practice as a nurse practitioner in this state who reapplies for approval to practice shall:

- (1) meet the nurse practitioner approval requirements as stipulated in Rule .0108(c) of this Subchapter; and
- (2) complete the appropriate application.

(h) Volunteer Approval to Practice. The North Carolina Board of Nursing shall grant approval to practice in a volunteer capacity to a nurse practitioner who has met the qualifications to practice as a nurse practitioner in North Carolina.

(i) The nurse practitioner shall pay the appropriate fee as outlined in Rule .0115 of this Subchapter.

(j) A Nurse Practitioner approved under this Subchapter shall keep proof of current licensure, registration and approval available for inspection at each practice site upon request by agents of either Board.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.20(7); 90-171.23(b); 90-171.42; Eff. January 1, 1991; Paragraph (b)(1) was recodified from 21 NCAC 32M .0104 Eff. January 1, 1996; Amended Eff. December 1, 2006; May 1, 1999; January 1, 1996; Recodified from 21 NCAC 32M .0103 Eff. August 1, 2004; Amended Eff. January 1, 2012; December 1, 2009; November 1, 2008; January 1, 2007; August 1, 2004.

21 NCAC 32M .0108 INACTIVE STATUS

(a) Any nurse practitioner who wishes to place her or his approval to practice on an inactive status shall notify the Board of Nursing.

(b) A nurse practitioner with an inactive approval to practice status shall not practice as a nurse practitioner.

(c) A nurse practitioner with an inactive approval to practice status who reapplies for approval to practice shall meet the qualifications for approval to practice in Rules .0103(a)(1), .0104(a) and (b), ~~.0104(a); .0106(b)~~; .0107; and .0110 and (b)(1) of this Subchapter and receive notification from the Board of Nursing of approval prior to beginning practice after the application is approved by both Boards.

(d) A nurse practitioner ~~with an inactive approval to practice status of greater than five~~ who has not practiced as a nurse practitioner in more than two years shall complete a nurse practitioner refresher course approved by the Board of Nursing in accordance with Paragraphs (o) and (p) of 21 NCAC 36 .0220 and consisting of common conditions and ~~the~~ management of these conditions directly related to the nurse practitioner's area of education and ~~certification~~ certification in order to be eligible to apply for approval to practice.

History Note: Authority G.S. 90-18(c)(14); 90-18.2; 90-171.36;

Eff. January 1, 1996;

Amended Eff. January 1, 2013; December 1, 2009; December 1, 2006; August 1, 2004; May 1, 1999.

Adjournment:

This meeting was adjourned at 11:20 am, Friday, June 22, 2012.

Thomas R. Hill, MD
Secretary/Treasurer