

# Braving New Pathways

Leading the Way for Regulatory Transformation



NCSBN

2021 Annual Meeting

| Aug. 18-19, 2021

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Regulatory Transformation



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# Model Act and Rules Committee

Ruby Jason, MSN, RN, NEA-BC *Chair, MA&R Committee*

Rebecca Fotsch, JD, *Staff*

Nicole Livanos, JD, *Staff*

# Committee Charge

*Perform ongoing review, revision, and development of Model Acts and Rules to reflect the current regulatory environment and to remove any other language that does not support public safety such as default on student loans.*

# Committee Activity

- 6 in-person meetings over 2-year committee appointment
  - 1 additional meeting to address changes due to COVID-19
- Research
  - FARB Model
  - Occupational Licensure trends
- LPN experts consulted
- Up-to-date research considered
  - NCSBN Outcomes and Metrics Study
- Presentation of significant changes presented to NCSBN Board of Directors in February 2021 and to membership at Midyear Meeting in March 2021.

# What is the Model Act and Rules?

- Adopted by NCSBN membership as the representation of best practices and processes for nursing regulation.
- Tool for reference when advocating for legislative or regulatory change.



# Methods to Addressing Existing Model Act and Rules

Considerations included (not exclusive):

- Public Safety
- Occupational Licensure Considerations / *North Carolina Dental*
- Best Practices
- Evidence
- Modernization
- Streamlining
- COVID-19

# Presentation of Recommendations Today

- Organized by significant change
  - Current Language / Status Quo
  - Recommended Change
  - Discussion
- Non-significant changes are located in the draft model act and rules in the Business Book

# BON Structure



# Member Terms

## BON Membership

### Current:

- “No member shall serve more than two consecutive full terms...”

### Recommendation:

- “No member shall serve more than < > consecutive full terms or < > consecutive years.”

### Discussion:

- No evidence to support number of terms
- Balance value in institutional knowledge and new perspectives



# Board Powers and Duties

## BON Powers and Duties

### Current:

- Lengthy detailed list

### Recommendation:

- Slimmed down list
  - Focused on authorization to conduct activities

### Discussion:

- Details belong in sections of acts pertaining to issue
- BON powers and duties in the act should be streamlined and outline basic authorization for each BON activity

# Frequency of Meetings

## BON Meetings

### Current:

- “BON shall meet at least quarterly”

### Recommendation:

- “BON shall meet at least <>”

### Discussion:

- No evidence to support specific number of meetings

# Education Program Approval

## BON Powers and Duties

### Current:

- “Develop and enforce standards for nursing education”

### Recommendation:

- “Develop and enforce standards and processes for nursing education programs”

### Discussion:

- Provide for authorization for enforcement of approval process
- *NC Dental* considerations



# Data Sharing

## BON Powers and Duties

### Current:

- “Collect and analyze data regarding nursing education, nursing practice, and nursing resources.”

### Recommendation:

- “Collect, analyze, and share data, where permissible, regarding ...”

### Discussion:

- Provides for sharing of data BONs collect and analyze regarding education, practice, and resources.

**\*some data sharing may be limited by jurisdictional law**



# Licensee Public Announcement

## BON Powers and Duties

### Current:

- “Regulate the manner in which nurses announce their practice to the public”

### Recommendation:

- Removed.

### Discussion:

- Considered employer activity
- Model Act to include nurse identification and titles / abbreviations

# Membership in Private Orgs.

## BON Powers and Duties

### Current:

- “Maintain membership in national orgs. that develop national licensure examinations and exclusively promote the improvement of the legal standards of the practice of nursing for the protection of public health, safety and welfare.”

### Recommendation:

- “Participate or hold membership in national organizations that promote the provisions of this act”

### Discussion:

- Not appropriate to include membership in NCSBN in BON powers and duties
- Occupational licensure reform considerations



# Public Members

## BON Membership

### Current:

- No material financial interest in the provision of “nursing services”

### Recommendation:

- No material financial interest in the provision of “health care services”

### Discussion:

- Potential for conflicts with direct interest in any health care services, not just nursing services



# Lawsuits

## Immunity

### 1. Immunity

Current:

- BON members immune “from individual civil liability while acting within the scope of the duties as BOD members”

Recommendation:

- “BON members enjoy immunity as provided under jurisdictional law”

### 2. Lawsuits

Current:

- “In the event that the entire BON, an individual member or staff is sued, the attorney general shall appoint an attorney to represent the involved party, or pursuant to jurisdictional law”

Recommendation:

- Remove.

### Discussion:

- **Provisions should tie back to jurisdictional law governing the subject so as not to recommend BONs advocate for ‘special’ treatment.**

# Executive Officer

## BON Powers and Duties

### Current:

- “Appoint and employ a qualified RN to serve as executive officer”

### Recommendation:

- “Appoint and employ a qualified individual to serve as executive officer”

### Discussion:

- Occupational licensure concerns
- No evidence to support necessity of RN degree
- Plenary examples non-RN EO’s can effectively perform powers and duties of EO

# Executive Officer Effectiveness

Executive Office

## Current:

- “The BON shall monitor and periodically evaluate the effectiveness of the executive officer.”

## Discussion:

- Employment activity
- State-specific processes

## Recommendation:

- Removed.

# Scope of Practice

# Delegation

## RN Scope of Practice

### Current:

- Not located in act.

### Recommendation:

- “Delegates to another only those nursing measures for which the delegatee has the necessary skills and competence to accomplish safely”

### Discussion:

- Accountability for ensuring delegatee ability

# Patient Diagnosis

## RN Scope of Practice

### Current:

- “Establish nursing diagnosis”

### Recommendation:

- “Participates in and establishes patient diagnosis”

### Discussion:

- Recommended by the National Academy of Medicine Committee on Improving Patient Diagnosis.
- Evidence indicates that nursing diagnoses do not contribute to the overall care of patients.
- Push for participation by all qualified health care providers

# Assessment

## RN and LPN Scope of Practice

### Current:

- LPN “focused assessment”
- RN “comprehensive assessment”

### Recommendation:

- LPN “assessment”
- RN “assessment”

### Discussion:

- Discussion with LPN experts
- Looked at definitions of ‘focused’ and ‘comprehensive’ assessments
  - Both involve collection, analysis and synthesis of data

# NLC Conformity



# NLC Conformity

## Throughout the Act

### 1. Active & Unencumbered

Current:

- “licensed in good standing”

Recommendation:

- Active and unencumbered license

### 2. Practice Authority

- Add *Privilege to Practice*

### 3. Grounds for Discipline

Current:

- “a. Convicted or found guilty, or has entered into an agreed disposition, of a felony offense under applicable state or federal criminal law Confidentiality, patient privacy, consent or disclosure violations.”

Recommendation:

- Add “...or misdemeanor offense related to the practice of nursing”

Discussion:

Model Act and Rules should mirror NLC terminology where applicable and appropriate

# Discipline

# Discipline in another jurisdiction

## Grounds for Discipline

### Current:

- None.

### Recommendation:

- Grounds for discipline to include ... “revocation, suspension, or denial of, or any other action relating to, the person’s license or privilege to practice nursing in another jurisdiction or under federal law;”

### Discussion:

- Reciprocal discipline
- Public safety concerns



# Retained jurisdiction

## Discipline and Proceedings

### Current:

- None.

### Recommendation:

- “The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered license. The Board’s jurisdiction over the licensee extends for all matters, known or unknown to the Board, at the time of the expiration, inactivation, or surrender of the license.”

### Discussion:

- BON should retain jurisdiction over individual for investigatory purposes
- Public safety concerns

# Employment of unauthorized individual

## Violations

### Current:

- “Employ a nurse without verifying the nurse’s authority to practice in this jurisdiction”

### Recommendation:

- “Employ, for compensation or without compensation, an individual claiming to be licensed under this act that does not have the authority to practice nursing in this jurisdiction.”

### Discussion:

- Clarifies employer responsibility for employing nurses authorized to practice in the state
- Shifts violation activity from lack of verification to employing the individual

# Automatic Suspension

## Emergency Action

### Current:

- “b. Automatic Suspension  
1. Unless the BON orders otherwise, a license to practice nursing is automatically suspended if...”

### Recommendation:

- Deleted.

### Discussion:

- Automatic suspensions raise due process concerns for licensees
- Summary suspensions and other emergency actions are still maintained in the Model Act

# Student Loans and Child Support

## Grounds for Discipline

### Current:

- “14. Failing to pay child support or delinquent child support pursuant to the procedural laws and rules of the jurisdiction.  
15. Defaulting on health education loan or scholarship obligations pursuant to the procedural laws and rules of the jurisdiction.

### Recommendation:

- Deleted.

### Discussion:

- Occupational licensure reform
- No nexus to nursing and public protection

# Alternative to Discipline Programs

Throughout

## Current:

- Extensive requirements for ATD programs

## Recommendation:

- Remove program requirements
- Leave in authorization to have programs

## Discussion:

- Ongoing ATD study to provide further guidance
- Much of what was in the rules is located in ATD program policies and contracts



# Disciplinary Hearings

Allow for remote disciplinary process

Current:

- None.

Recommendation:

- ***Section 6. (i). Implement the discipline process either in person or virtually in accordance with a state's statute and rules.***
- ***1. Issue subpoenas in connection with investigations, inspections and hearings either in person or electronically.***

Discussion:

- **Streamline and modernize BON procedures**

# Licensure

# Licensure entitlement

## RN/LPN/APRN Licensure

### Current:

- “an applicant for licensure by examination to practice as an RN or LPN/VN who successfully meets the requirements of this section shall be entitled to licensure as an RN or LPN/VN.”

### Recommendation:

- “an applicant for licensure by examination to practice as an RN or LPN/VN must successfully meet the requirements of this section, as determined by the BON by rule.”

### Discussion:

- **Allows for BON flexibility**



# Temporary Licensure/Permit

Throughout

## Current:

- Provisions in Model Act and Rules provides for temporary licensure

## Recommendation:

- Temporary licensure provisions for initial licensure (by examination) removed.

## Discussion:

- **Public safety**
  - Ex. employers not following up on whether the nurse is ultimately granted a permanent license
  - Ex. if temporary license is issued prior to analysis of CBC



# Administration of Exam

Throughout

## Current:

- **Specifics on administration of examination**
  - Location
  - Time
  - Etc.

## Discussion:

- Antiquated
- BONs do not administer the NCLEX-RN or PN

## Recommendation:

- **Removed.**

# Applicant and Licensee Background

# Criminal Conviction Matrix

## Criminal Background Check

### Current:

- None.

### Recommendation:

- **Factors to consider:**
  - Seriousness of crime
  - Age at time of conviction
  - Facts / circumstances
  - Nexus to nursing
  - Etc.

### Discussion:

- Occupational licensure reform trends
- Providing a mechanism for BONs to make an assessment

# Criminal Convictions- Sexual Offense

## Criminal Background Checks

### Current:

- Located in Model Rules:

“All individuals convicted of a sexual offense involving a minor or performing a sexual act against the will of another person shall be subject to a BON order for evaluation by a qualified expert approved by the BON. If the evaluation identifies sexual behaviors of a predatory nature the BON shall deny licensure.”

### Recommendation:

- Move to act.
- Expand to those unable to consent.

“...against the will of another person including those without the mental capacity to consent shall be subject to a BON order...”

### Discussion:

- **Bars to licensure must be in act, not rules.**
- **Initial inclusion in Model Rules**
  - Expert panel



# COVID-19

# Vaccine Administration

## Delegation

### Current:

- None.

### Recommendation:

- “In the event of a declared state of emergency in this state, the Board may waive the requirements of this Article to allow emergency health services to the public.”

### Discussion:

- Public safety
- Grants broad powers to waive requirements during a state of emergency including delegating the task of vaccine administration.

# Licensure Exemptions and Renewal Delays

## Retired and Inactive Licenses

### Current:

- None.

### Recommendation:

- In the event of a declared state of emergency in this state, an individual who retired from licensed practice of practical nursing, registered nursing, or advanced practice registered nursing in this state in the last <> years shall be issued a temporary license to practice for <time period> from the date of issuance. The individual must have retired with an unencumbered license to qualify for a temporary license.

### Recommendation:

- In the event of a declared state of emergency in this state, an individual who has a currently inactive license to practice practical nursing, registered nursing, or advanced practice registered nursing in this state in the last <> years shall be issued a temporary license to practice for <time period> from the date of issuance. The individual must have become inactive with an unencumbered license to qualify for a temporary license.

# Academic Programs

Current:

Emergency Preparedness

- None.

Recommendation:

- **Section 6. (b) (5).** Creation of an emergency preparedness plan for addressing situations including but not limited to a reduction in the availability of student clinical sites, a transition from in-person to virtual learning platforms, and a need for increased use of simulation.

**New Section:** During a declared state of emergency, the board may authorize approved nursing education programs to implement mitigation efforts to address, including but not limited to, the availability of clinical placement sites, transition to virtual learning from in-person platforms, and changes in use of simulation. The program shall keep records of any mitigation policies or strategies used and shall include the information in the annual report submitted to the board.

**Discussion:** Gives BON flexibility to exclude certain academic requirements during an emergency.



Other

# Telehealth

## Location of Practice

### Current:

- None.

### Recommendation:

- Section 6. (q). Regulate the practice of nursing, which occurs where the patient is located at the time telemedicine technologies are used.

### Discussion:

- Public safety
- Consistent with NLC.

# Unlicensed Assistive Personnel

Throughout

## Current:

- Model Act and Rules provide for regulation of UAPs, defined as Certified Nursing Assistants and Medication Assistant Certified
- Also provides for program approval for UAPs

## Recommendation:

- Remove from Model Act and Rules.

## Discussion:

- Nursing assistive personnel growth beyond two defined roles

# Duty to Report In Timely Manner

## Duty to Report

### Current:

- None.

### Recommendation:

- “A licensee shall report any conviction, finding of guilt, or entrance into an agreed disposition, of a felony offense under applicable state or federal criminal law.”

### Discussion:

- Public safety
- Duty to report ongoing, not only captured at renewal



# BON ordered examinations

Immunity and protection from retaliation

**Current:**

- None.

**Recommendation:**

- “Any licensed health care professional who examines an applicant or licensee under this act at the request of the BON shall be immune from suit for damages by the nurse examined if the examining health care professional conducted the examination and made findings or diagnoses in good faith. The immunity does not extend to willful or wanton behavior by the licensed health care professional.”

**Discussion:**

- **Extend protections for those performing board ordered examinations**

# Title “Dr.”

## APRN Titles and Abbreviations

### Current:

- “The APRN with an earned doctorate may use the term doctor or abbreviation ‘Dr.’”

### Recommendation:

- Delete

### Discussion:

- Not appropriate for regulatory model legislation
- Model act and rules does not address PhD or doctorate candidates who are RNs or LPNs

# Thank you!

Questions?