

**BOARD OF NURSING**  
Professional and Vocational Licensing Division  
Department of Commerce and Consumer Affairs  
State of Hawaii

MINUTES OF MEETING

The agenda for this meeting was filed with the Office of the Lieutenant Governor as required by Section 92-7(b), Hawaii Revised Statutes (“HRS”).

Date: Thursday, February 3, 2022

Time: 9:00 a.m.

Place: Virtual: ZOOM Link:<https://dcca-hawaii-gov.zoom.us/j/97706613617>  
ZOOM Phone Number: (669) 900 6833  
Meeting ID: 977 0661 3617

Members Present: Carrie Oliveira, Chair  
Olivia Kim, BSN, BS, RN, LPN, NHA, Vice Chair  
Karen Boyer, RN, MS, FNP  
Katharyn Daub, MNEd, EdD, RN  
Jomel Duldulao, Public Member  
Judy Kodama, MSN, MBA, RN, CNML  
Tammie Napoleon, DNP, APRN, PPCNP-BC  
Amy Stone Murai, APRN

Members Excused: Benjamin Ramos, RN

Staff Present: Lee Ann Teshima, Executive Officer (“EO Teshima”)  
Chelsea Fukunaga, EO (“EO Fukunaga”)  
James Skizewski, Executive Officer  
Rochelle Araki, Executive Officer  
Shari Wong, Deputy Attorney General (“DAG”)  
Marc Yoshimura, Secretary

Guests: Barbara Hale  
Bradley Kuo, Legislative Coordinator, Hawai'i Association of Professional Nurses  
Laura Reichhardt, Hawaii State Center for Nursing  
Linda Beechinor, Hawai'i American Nurses Association  
Pamela Smith  
Ricardo Sanchez  
David Hendrickson, Attorney for Wilma Concepcion

For purposes of this virtual meeting, the Chair will take roll call of the Board members to establish quorum and for motions that require a vote of the Board members.

Virtual Meeting Instructions: A short video regarding virtual meetings was played for attendees.

The Chair provided information on internet and phone access for today's virtual meeting and announced that today's meeting was being recorded and that the recording will be posted on the Board's web page.

Call to Order: The Chair took roll call of the Board members and excused Mr. Ramos from today's meeting.

After taking roll, quorum was established and she called the meeting to order at 9:07 a.m.

The Chair announced that we have a very full agenda today since we cancelled our January meeting. So she would appreciate everyone's patience as we go through the agenda items. For those in attendance, I will periodically ask if anyone wants to address the Board before an agenda item, at that time, please raise your hand so that we can call on you. As a reminder, since our meeting is being held virtually, all voting will be done by roll call.

Chair's Report: **Announcements**

The Chair had no announcements and announced that the next agenda item was approval of the minutes of the December 2, 2021 meeting.

### **Approval of the Minutes of the December 2, 2021 Meeting**

The Chair asked the members if they had any discussion or corrections or would like to discuss the minutes.

There being no corrections or discussion, Chair called for a motion in regard to the minutes of the December 2, 2021 meeting.

Upon a motion by Ms. Boyer, seconded by Ms. Daub, it was voted on with the Chair, Vice Chair, Ms. Boyer, Ms. Daub, Mr. Duldulao, Ms. Kodama and Ms. Stone Murai voting "yes" and Dr. Napoleon abstaining, to approve the minutes of the December 2, 2021 meeting as circulated.

The motion carried.

### **Education Committee Report - January 19, 2022 Meeting**

The Chair read the following recommendations from the January 19, 2022 Education Committee meeting:

- Hawaii Nursing Programs:  
Annual Reports - Recommend approval of the following Hawaii nursing program's annual report:
  - ✓ Hawaii Pacific University
  - ✓ University of Hawaii@Hilo
- Faculty – Recommend approval of the following faculty applications:
  - ✓ Hawaii Pacific University: Carolyn Barata Yucha
  - ✓ Kapiolani Community College: Brenna Kahana  
Lynn Jenkins  
Christina Mikolajczyk  
Jacinta Lopez
  - ✓ Kauai Community College: Laura Wolfgang  
Jennifer Ballard
  - ✓ University of Hawaii at Manoa – Nancy Atmospera-Walch School of Nursing: Bradley Kuo

Louann Robinson  
Tania Lynch

- Credentialing Organization for Review of Foreign Educated Nurses: Spantran - Committee was not inclined to accept or recognize Spantran as a Board-approved credentials evaluator for foreign educated nurses.

The Chair called for a motion in regard to the Education Committee's recommendations from their January meeting.

Upon a motion by Ms. Kodama, seconded by Mr. Duldulao, it was voted on and unanimously carried to approve the Education Committee's recommendations from their January 2022 meeting.

The Chair announced the next agenda item was the Executive Officer's Report.

Executive Officer's Report:

**Renewal Audit Report - Status**

EO Teshima reported that there are approximately 3 boxes of submittals to review and some online emailed submissions. As of yesterday, 656 (34 LPN, 588 RN and 34 APRN) have completed the CC requirement and 108 (4 LPN, 97 RN and 7 APRN) notices were returned. Once all the submittals have been reviewed, a list will be posted on the Board's web page that will indicate if the individual has completed the CC requirements, is deficient, mail returned or no response. Deficiencies have not been mailed out yet as we are trying to review all the submittals first and will then send out deficiencies at which time the licensee will have a short turn around before they are referred to RICO for disciplinary action. At that time, we will also be re-mailing out the returned mail and giving them a short turn around for a response before referring to RICO. Those who did not respond will be automatically referred to RICO.

She asked the members if they had any questions.

There were none.

She asked if anyone attending had any questions to raise your hand now.

No one raised their hand.

**Act 18, SLH 2021 Relating to Military Spouses**

EO Teshima reported that Act 18, SLH 2021 relating to military dependents amended HRS 436B and not HRS Chapter 457 and how this bill that went into effective on January 1, 2022 and affects the processing of applications for license by a military spouse. Although no license requirements are waived, processing must be expedited and the license, once issued, is only valid for 5 years, and must also be renewed. She stated that the application and instructions for the Temporary Military Spouse License is posted on the Board's web page under Nursing License.

EO Teshima asked if there was any discussion or questions by the members.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

### **Act 220, SLH 2021 Relating to Sunshine Law Boards**

EO Teshima reported that effective January 1, 2022, Act 220, SLH 2021 went into effective that would require Board “remote” meetings to have at least one in-person meeting location, however, this was suspended until March 25, 2022 under the extension of Governor Ige’s current EP.

EO Teshima asked if there was any discussion or questions by the members.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

### **2022 Legislative Session**

EO Teshima reported on the following bills:

#### HB 1594/SB 2274 Relating to the Center for Nursing

**Report Title:** Center for Nursing; Workforce Supply Survey; License Fees; Increase  
**Description:** Requires all nursing license applicants to respond to the center for nursing workforce supply survey in conjunction with license renewal, provided that the license renewal shall not be contingent upon responding to the workforce supply survey and failure to respond to the workforce supply survey shall not result in encumbrance of the nurse’s license. Increases the center for nursing fee from \$40 to \$60 per license biennium.

She reported that testimony was drafted on behalf of the Board offering comments that the mandatory workforce survey was unnecessary and unenforceable and that HB 1594 was referred to the House committees on Health, Human Services, & Homelessness, chaired by Ryan Yamane and was heard yesterday by this committee who passed out the bill as an HD1, with tech amendments, deleting most of the preamble and including a defective date of 7/1/2060.

The next committee to hear this bill would be the House committee on Consumer Protection & Commerce, chaired by Aaron Ling Johanson and the Finance, chaired by Sylvia Luke.

She reported that the senate companion bill, SB 2274 was referred to the senate committees on Health, chaired by Jarrett Keohokalole/Commerce and Consumer Protection, chaired by Rosalyn Baker and Ways and Means, chaired by Donovan Dela Cruz and that no hearing was scheduled for this bill to date but that the testimony would be the same that was submitted for the House bill.

She asked the members, acknowledging the Chair’s recusal from discussion on these bills, if there was any discussion on the Board’s position that was previously discussed.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

SB 2602 Relating to Limitations on Work Hours for Nurses

**Report Title:** Nurses; Registered Nurses; Licensed Practical Nurses; Limitation of Work Hours; Overtime; Health Care Provider-employer; Penalties

**Description:** Establishes limitations on the mandatory and voluntary work hours for registered nurses and licensed practical nurses. Effective 1/1/2023.

She reported that this bill was referred to the senate committees on Labor, Culture and Arts, chaired by Brian Taniguchi and Commerce and Consumer Protection, chaired by Rosalyn Baker/Ways and Means, chaired by Donovan Dela Cruz and that no hearing was scheduled for this bill to date.

She stated that she is currently tracking this bill as it does not amend HRS Chapter 457.

She asked the members, if there was any discussion.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

SB 2680 Relating to Health

**Report Title:** Our Care, Our Choice Act; Advanced Practice Registered Nurses; Mandatory Waiting Period

**Description:** Authorizes advanced practice registered nurses, in addition to physicians, to practice medical aid in dying in accordance with their scope of practice and prescribing authority. Authorizes psychiatric mental health nurse practitioners and clinical nurse specialists, in addition to psychiatrists, psychologists, and clinical social workers, to provide counseling to a qualified patient. Reduces the mandatory waiting period between oral requests from twenty days to fifteen days. Waives the mandatory waiting period for those terminally ill individuals not expected to survive the mandatory waiting period.

She reported that this bill was referred to the senate committees on Health, chaired by Jarrett Keohokalole and Commerce and Consumer Protection, chaired by Rosalyn Baker/Judiciary, chaired by Karl Rhoads and Labor, Culture and Arts, chaired by Brian Taniguchi and Commerce and Consumer Protection, chaired by Rosalyn Baker/Ways and Means, chaired by Donovan Dela Cruz and that no hearing was scheduled for this bill to date.

She stated that since the language is similar to SB 839, SD2 from the 2021 session, the testimony on this bill will reflect the Board's position from last year.

She asked the members, if there was any discussion.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

SB 2460 Relating to Nurses

**Report Title:** Nurses; Registered Nurses; Licensed Practical Nurses; License; Endorsement; Temporary Permits

**Description:** Allows for temporary permits to be issued to registered nurses and licensed practical nurses from a territory or foreign country that are seeking a state license by endorsement.

She reported that this bill was referred to the senate committee on Health, chaired by Jarrett Keohokalole who scheduled a hearing tomorrow. She reported that on behalf of the Board, testimony was submitted regarding the processing of applications that includes verification of education for endorsement applicants and that foreign educated applicants even if applying by endorsement would have to have their education reviewed by a Board approved credentialing organization or vetted by another U.S. Board of Nursing.

She reported that should this bill pass out of the Health committee it would be heard next by the Senate committee on Commerce and Consumer Protection, chaired by Rosalyn Baker/Judiciary, chaired by Karl Rhoads.

She asked the members, if there was any discussion.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

**APRN Scope of Practice Decision-Making Chart - Draft**

EO Teshima reported that the members received a very very rough draft of the APRN scope of practice decision-making model that was “borrowed” from the Oregon BON and that if the Board accepts with any revisions, she will be reaching out to the ED at the Oregon BON to get “permission” to use/copy their APRN algorithm. She asked if there were any recommendations by the members.

The members determined that the first text box that states, “Is the activity/task/intervention or role permitted by the Hawaii nurse practice act?” was not necessary and should be deleted since the next text box asks if the activity/task/intervention, or role expressly prohibited.

The Chair had a question in regard to the fourth text box that refers to a “Graduate APRN role and education;” it wasn’t until 2009 when APRNs were required to have a graduate-level degree in nursing so she is concerned with the small group of APRNs who may not have this degree.

EO Teshima stated that it refers to graduate APRN role and education or national certification.

The Chair stated that the current draft does not include “or” or “and”.

The EO stated that this decision-making flow chart may not apply to those APRNs who do not have a graduate-level degree in nursing so the Board will have to address those inquiries on a case-by-case basis.

Ms. Stone Murai commented that in the fourth text box, in regard to reference to “Reimbursement/payer requirements”, we don’t usually deal with that aspect.

EO Teshima stated that this decision-making flow chart was copied from the Oregon BON as a starting point for the Board to discuss the development of your own decision making flow chart for APRN practice.

Ms. Stone Murai stated that there should be more discussion on this.

EO Teshima stated that is what we are doing today and asked if the bullet referring to reimbursement should be removed.

The Chair stated that she is inclined to remove this requirement.

Ms. Stone Murai stated that although important she is inclined to remove the reimbursement bullet because the Board does not have control over this.

The Chair stated that whether or not reimbursement by payer/insurance should not be a determining factor in determining the appropriate care provided to a patient.

EO Teshima asked if there were any other recommendations.

The Chair stated that the first text box asking if the activity/task, etc. is permitted by the nurse practice act, perhaps this should be deleted since the nurse practice act does not delineate 100% everything that a nurse can do.

Ms. Stone Murai stated that the second to the last text box that states, “Are you approved or credentialed to provide the activity/task/intervention, or role?”, she was concerned with this bullet as “approved and credentialed” would place in the Board in a position to establish a list of procedures that are acceptable and may limit the scope of practice of the APRN.

The Chair asked what if an APRN who is nationally certified as a pediatric NP, asks if they can treat adults or an FNP asking if they can treat psychiatric-mental health.

Ms. Stone Murai responded that she believes the fourth text box on the first page would address this.

The Chair agreed and asked if there was any further discussion.

Ms. Boyer stated that perhaps the bullet in question is referring to specialized training that you are credentialed in.

Ms. Kodama stated that she believes the that the fourth text box already refers to National certification's standards of practice".

The Chair agreed and added that the Board previously had a similar discussion that if you were an FNP but had additional education/training in psychiatric mental health but do not hold a national certification in psychiatric-mental health, that would technically make you uncredentialed.

EO Teshima asked if it should be re-worded for clarification regarding national certification as the reference to "credentials" could be national certification or if the APRN is credentialed by a hospital.

Ms. Stone Murai stated that she felt the last bullet in the third text box on the second page was redundant.

Ms. Kodama agreed.

There being no further discussion, EO Teshima said she will work on a final for the Board's consideration. She also asked if anyone attending wanted to address the Board on this agenda item.

No one raised their hand.

### **January 26, 2022 Extension of Governor Ige's Emergency Proclamation**

EO Teshima reported that Governor Ige extended his current emergency proclamation ("EP") on January 26, 2022 that still includes the suspension of the license requirement for out-of-state nurses, etc. only if the individual is hired by a state or county agency or facility or hospital, etc. and that facility making use of the exemption shall "register" the medical professional working under this exemption, verify that there are no disciplinary actions, insurance claims or pending lawsuits against the registered professional and indemnify the State for the actions or inactions of the registered medical professional.

She reported that the "registration" requirement was new and that the "registration" form is available on PVL's web page under COVID-19 PVL Announcements. She stated that the new grad waiver is also included in the EP, which is due to expire on 3/25/2022.

She asked the members, if there was any discussion.

There was none.

She asked if there was anyone attending who wanted to address the Board on this agenda item.

No one raised their hand.

The Chair announced the next agenda item as reports from the Center for Nursing, Hawaii American Nurses Association and the Hawaii Association of Professional Nurses and reminded the presenters that they had 5 minutes.

Ms. Reichhardt, Ms. Beechinor and Mr. Kuo were all elevated to panelists.



Reports:

**Hawai'i State Center for Nursing – Laura Reichhardt, Executive Director**

Ms. Reichhardt reported on the following:

- Legislative updates;
- Capacity of nursing education, increasing funding for UH nurse faculty, nurse residency programs, increase nurse work supply; and
- Evidence-Based Workshop (in-person only), March 16-17, 2022 at the Hyatt Waikiki.

**Hawai'i American Nurses Association – Linda Beechinor, Executive Director**

Ms. Beechinor reported on the following:

- Working hard in coalitions as we present one voice at the legislature; and
- 424 RN members and still growing.

**Hawai'i Association of Professional Nurses – Bradley Kuo, Legislative Coordinator**

Mr. Kuo reported on the following:

- Coordinating with HSCFN & Hawaii ANA to address legislation; and
- Developing education sessions.

Ms. Beechinor commented that if HAPN was interested, Hawaii ANA is an approved provider of CE.

The Chair announced the next agenda item is review of continuing competency learning activities submitted by licensees that staff has asked for assistance in reviewing and asked if anyone attending wanted to address the Board on this agenda item.

No one raised their hand.

Continuing Competency  
– Learning Activities:

**Research Study**

The Chair reported that the Board's office received a research study submittal as part of a grant study that falls into the category of "completion as principal or co-principal investigator of a nursing research project that is an institution review board project or evidence-based practice project that has been preapproved by the board. The name of the research project, "Increasing physical activity in Filipino Lay Leaders.". As a reminder, the Chair also referred to the definition of continuing competency as defined in HRS 457-2 as, "Continuing competency" means the long-term educational and professional process by which an individual undertakes and documents with verifiable evidence a personal learning plan that encompasses a periodic self-assessment of personal strengths and weaknesses as present in the individuals practice as a nurse as well as a commitment to furthering the individual's professional knowledge relating to the nursing field." and added that for a research study, the nurse's role must be as principal or co-principal investigator of a nursing research project that is an institution review board project or evidence-based practice project that has been preapproved by the board. She asked the Board if there was any reason to not accept?

Ms. Boyer stated that she does not recall "pre-approving" this or any research project to meet the continuing competency learning activity and deferred to the Chair.

The Chair stated that this research study appears to be very robust and it was a very dense submission. She stated that she found the language in the continuing competency booklet a little ambiguous as it does say that the evidence-based project has to be pre-

approved but it is not clear if the nursing research project must be pre-approved if it is already an IRB-approved research study for which standards have already been met, i.e. ethical research, appropriate treatment of human subjects sound and methodically sound.

Ms. Stone Murai agreed with the Chair.

The Chair clarified if the Board is not concerned with preapproval by the Board of this research study, then does this research study meet the requirements.

EO Teshima asked for a consensus by the Board if all agreed and asked the Chair to do a roll call vote.

The DAG stated that pursuant to Act 20, SLH 2021, the Board did not have to do a roll call vote if it was unanimous.

The Chair asked if there are any objections to accept this research study as satisfying the continuing competency learning activity.

There was none.

The Chair announced the next agenda item is review of another request for the continuing competency learning activity submitted by a licensee that staff has asked for assistance in reviewing and asked if anyone attending wanted to address the Board on this agenda item.

No one raised their hand.

### **Authoring a Peer Reviewed Nursing or Health Related Article, Book or Book Chapter**

The Chair reported that the Board's office received a project submitted by the licensee under the learning activity "authoring or coauthoring a peer reviewed published nursing or health-related article, book or book chapter" and the name of the research project, "A Rapid Method to Evaluate Pre-Travel programs for COVID-19: A study in Hawaii" and the licensee is listed as one of the researchers. She asked that this article, at the top of the first page clearly stated that this was not certified by peer review so it fails to meet that criterion but asked the members if they thought it met the requirements as a research study.

Ms. Stone Murai stated that she thought it was very weak and did not believe that this met the criteria as a peer reviewed article or research study.

The Vice Chair questions how this project was related to the nursing field.

The Chair stated that she also questioned how the article was related to the nursing field and that the research project that the Board just accepted wasn't specifically related to nursing so because it was done by a "nurse" is it considered nursing related? How do we defined nursing or health related?

Ms. Daub commented that it was not peer-reviewed and so she looked at the DOI and read through the methodology but did not base her conclusion on the depth of the research but compared the criteria for continuing competency and considered that this research project was not peer reviewed and therefore did not accept it.

The Chair wanted to point out that this study was reviewed by the institutional review board of the Hawaii State Department of Health which approved the study that met the criteria for public health surveillance based on a bit of code. She agrees with the Board that this may not meet the criteria for a peer reviewed project however, also wanted clarification if this met the requirements/definition of a research study. She expressed concern, stating that it might be short-sighted to conclude that a submission that does not qualify as peer-reviewed would also not count towards continuing competency. The Chair stated that she does not want to exclude things because a submission was submitted for review in an inapplicable category when there is a category into which the activity does fall.

EO Teshima asked whether the paper should be applied to the previous learning activity option (Research Study), instead of being considered for a peer-reviewed nursing or health-related book or chapter.

The Chair agreed.

Ms. Boyer stated that you would have to be a principal or co-principal on the research project.

The Chair agreed.

EO Teshima clarified that the person who submitted the project is a nurse, not the M.D., PhD.

Ms. Boyer appreciated the discussion. Indicated that the applicant is not a principal or co-principal on what we are seeing is a research project.

Chair concurred. Based on the discussion, it seems that the Board is not inclined to accept this submission for continuing competency because it is neither the criteria for a peer-reviewed nursing or health-related article, book, or book chapter, nor does it meet the criteria for a research study.

EO Teshima clarified that the applicant is not the principal or co-principal.

Ms. Stone-Murai stated that the Board has no idea what the applicant's role was when the study was conducted. For example, the applicant may have been the only nurse and was the one who was doing the specimen collection. This would not be considered a scholarly activity.

After further discussion, it was the consensus of the Board that this study did not meet the requirements for a continuing competency learning activity as a research project or nursing research study or evidence-based project or the definition of continuing competency as defined in HRS §457-2.

The Chair announced that the Board will now be moving into executive session to discuss and consider applications submitted for a Hawaii license, and asked for a motion to move into executive session in accordance with HRS §92-4 and §92-5(a)(1) and (4) "To consider and evaluate personal information relating to individuals applying for nurse licensure;" and "To consult with the Board's attorney on questions and issues pertaining to the Board's powers, duties, privileges, immunities, and liabilities;"

She asked that if there are any applicants attending, the Board will call you so that you may join them in executive session.

EO Teshima acknowledged Mr. Sanchez.

Executive Session: At 9:58 a.m., upon a motion by the Vice Chair, seconded by Ms. Stone Murai, it was voted on and unanimously carried to move into executive session.

The Board resumed the meeting at 10:49 a.m. after coming out of executive session.

Applications: **Ratification Lists**

Upon a motion by the Chair, seconded by Ms. Daub, it was voted on and unanimously carried to approve the following ratification lists:

LPNs, license numbers 20249 – 20288 (39);  
RNs, license numbers 103642 – 104451 (809); and  
APRNs and APRNs with prescriptive authority

**Applications for Licensed Practical Nurses, Registered Nurses and Advanced Practice Registered Nurses**

The Chair called for a motion in regard to the applications.

Upon a motion by the Vice Chair, seconded by Ms. Kodama, it was voted on with the Chair, Vice Chair, Mr. Duldulao and Ms. Kodama voting “yes” and Ms. Boyer, Dr. Napoleon, Ms. Daub and Ms. Stone Murai voting “no” to defer the following application for additional information is received. The motion did not carry.

**Ricardo Sanchez**

Upon a motion by Ms. Boyer, seconded by Ms. Daub, it was voted on with Ms. Boyer, Ms. Daub, Dr. Napoleon, Ms. Stone Murai and the Chair voting “yes” and the Vice Chair, Mr. Duldulao, and Ms. Kodama voting “no” to approve the following application:

**Ricardo Sanchez**

The motion carried.

Upon a motion by the Vice Chair, seconded by Ms. Stone Murai, it was voted on and unanimously carried to approve the following applications:

**Mary Anne Converse  
Olivia Thompson**

**Delegation**

Upon a motion by the Chair, seconded by Ms. Daub, it was voted on and unanimously carried to delegate to the EO to continue processing an application, once the Board determines that the applicant must obtain an assessment from Pu’ulu Lapa’au, upon receipt of confirmation/verification from Pu’ulu Lapa’au that the individual does not require any further treatment or monitoring, the EO may continue processing the application.

There being no further discussion on the applications, the Chair announced the next agenda item as Chapter 91, HRS, Adjudicatory Matters

Chapter 91, HRS –  
Adjudicatory Matters:

The Chair asked if there was any discussion by the Board members on any of the adjudicatory matters.

Seeing none, upon a motion by the Chair, seconded by Ms. Stone Murai, it was voted on and unanimously carried to approve the following adjudicatory matters:

In the Matter of the License to Practice Nursing of **Coretta A. Mathie; RNS 2021-362-L**; Settlement Agreement Prior To Filing of Petition for Disciplinary Action and Board's Final Order

In the Matter of the License to Practice Nursing of **Ann M. Barrios; RNS 2021-377-L**; Settlement Agreement After Filing of Petition for Disciplinary Action and Board's Final Order

The Chair announced for the next adjudicatory matter, the Board will be hearing oral arguments from the respondent's attorney and recognized Mr. Hendrickson.

She also informed Mr. Sanchez that the Board decided to defer his application for an assessment from Pu'ulu Lapa'au.

In the Matter of the License to Practice Nursing of **Wilma V. Concepcion; RNS-2018-16-L**; Board's Final Order for Non-Compliance Settlement Agreement

Mr. Hendrickson was elevated to panelist and the Chair informed him that he had 10 minutes.

Mr. Hendrickson introduced himself and thanked the Board for allowing him to address the Board on behalf of Ms. Concepcion. He asked the Board for relief that the Board take into consideration Ms. Concepcion's good faith effort to comply with the agreement and to understand that there was confusion regarding the final order and that she was not entirely at fault for the confusion and asked if the Board would accept the courses that she has already completed as being compliant with the Board's order or extend the deadline for her to submit new courses for approval and completion.

Mr. Hendrickson stated that he submitted 5 documents for the Board's consideration:

- 1) A postal money order receipt dated 7/18/2019 for \$500, made payable to the DCCA - Compliance Resolution;
- 2) A completion certificate dated 4/19/2021 for a course on charting;
- 3) A completion certificate dated 9/3/2021 for a course on recordkeeping;
- 4) A completion certificate dated 4/21/2021 on standards of practice; and
- 5) A completion certificate for a 30-hour course dated 4/19/2021 on Hawaii Nursing CEU.

He asked if the Board members had received this information.

EO Teshima confirmed that the members received the information/documents he submitted.

Mr. Hendrickson stated that he submitted these documents to demonstrate Ms. Concepcion's good faith effort to comply with the settlement agreement and asked the Board to review the \$500 postal money order that was obtained one week prior to the filing of the settlement agreement that indicates that she was eager and early to comply and that arguably the fine is the most difficult aspect of conditions placed on her by the agreement compared to the courses she was ordered to complete which is only 1 hour.

He stated that Ms. Concepcion did take courses on the required topics based on the completion certificates submitted and that she completed these courses before she was notified that she was not in compliance and also completed these courses in addition to maintain her nursing license in her attempt to satisfy the settlement agreement.

Mr. Hendrickson stated that she paid the fine and completed the courses and that we all know that the timing of when she completed the courses is an issue. He stated that according to the Board, the final order was issued on October 3, 2019 almost 2 ½ years ago and therefore she missed the deadline to submit the list for approval and complete the courses. He stated that in Ms. Concepcion's case she had no idea that the final order was issued and her obligation to submit the list of courses for approval had been triggered.

Mr. Hendrickson stated that after hearing nothing from the Board for almost 2 years, she assumed that the final order was associated with her licensing and probation which was about to expire. He stated that he believes this is reasonable based on the wording of the settlement agreement if you look at that paragraph that requires her to submit a list for approval within 30 days of the date of the Board's Final Order, the term within 30 days could be before or after the Board's Final order. He stated that she's not a board member like you or an attorney like me and was unaware that an order issued after probation, or when her probation is finally over, or when are things final.

He stated that Ms. Concepcion went ahead and registered for the required courses or what she hoped would be approved. She emailed the Board on 4/21/2021 asking for approval without a response, she went ahead and completed 2 of the courses along with her license renewal course and followed up on 6/20/2021 and received an email from response from EO Teshima and the emails that followed indicate genuine confusion on both sides and nothing was clarified.

Mr. Hendrickson stated that this is how we know that Wilma was sincere and that she was genuinely unaware of the final order. This also contradicts the RICO affidavit issued by Lauren Sugai dated 7/29/2021. That affidavit is a key component to the settlement agreement because it is required for the Board to take action on the license but now we know that there is that email exchange between Ms. Concepcion and EO Teshima, requesting approval for courses, albeit late, it happened and she took the courses.

He stated that the affidavit is not accurate indicating that the Board did not receive a list of the courses or completion certificates. He hopes that these emails have been shared and considered by the Board and that he see's EO Teshima nodding yes and that he hopes everyone has seen these emails and that he highlights these emails as it demonstrates a genuine confusion on her part but also lack of awareness of a final order and also contradicts the RICO affidavit.

Mr. Hendrickson said that Wilma, being a competent nurse, speaks English and passed all exams and stayed current with the qualifications and is intelligent, so why is she unaware, you know it's genuine and not a fabrication or act, so what happened? It's hard to know exactly what happened since we're dealing with events that occurred 2 ½ years ago, but the most logical explanation is that either she was not provided notice of the final order or that notice was inadequate.

He referred to his letter that gave rise as to him being heard today highlighting the lack of evidence as he did not see a return receipt for certified mail, no certified mail receipt signature, and no signature from her acknowledging receipt of in any form or any other evidence that she received the final order.

He stated that even if the Board were able to prove that she was notified somehow the notice would be inadequate anyway and what evidence is there of this. He wanted to share his screen with the Board, but was unable to and said he hoped that the Board was familiar with the final order and what it looks like.

Mr. Hendrickson, referring to the Board's Final Order, was unsure if they were all uniform and the same form sent to everybody, but what he can see the document dated October 3, 2019 looks just like a common signature page, there is nothing conspicuous or obvious about the document that notifies the recipient that it is in fact this all important document triggering the allegations pursuant to the agreement. The title is 3 lines and all caps. The term "final order" is buried within that title. The term in combined with another term, "Petition for Disciplinary Action". This is surprisingly inconspicuous for such an important document and can easily be missed or confused. There is no separate document indicating that this is the final order and that obligations to the course are now triggered.

He stated so there is no document that bears her signature acknowledging receipt, or that she understands her obligations regarding her courses are now triggered. Comparison to the other documents that were submitted to her, the RICO affidavit which has a certification of service, the letter that was sent on September 15, that has a certified mail number that can be tracked and contains an obvious description in the subject line as to what it is all about, these are clear and not confusing so why doesn't the Board do something like that with the final order if it's such an important document, the recipient should be on notice that their obligations are now being triggered.

Mr. Hendrickson stated that in order to avoid litigation on these issues, for someone who has been in practice for 26 years, this is not obviously something that we take lightly as there are administrative procedures act that implement due process that is a constitutional concept these are issues that deal with constitutional law, depriving somebody of their rights and that they need to be adequately heard and even though section 91 does allow for these settlement agreements, they can't be enforced arbitrarily or unfairly.

He stated that what is happening in this case and in order to avoid litigation, he is asking just as a reminder that what he asked in the beginning that the Board:

- 1) Recognize Wilma's good faith efforts to comply with the agreement;
- 2) Understand that there was confusion regarding the final order;
- 3) Understand that the confusion wasn't entirely Wilma's fault; and
- 4) Either accept the courses that she has already completed as compliance with the agreement or extend the deadline for her to submit new courses for approval and to complete the courses.

Mr. Hendrickson thanked the Board.

The Chair thanked Mr. Hendrickson and asked the Board members and EO if they had any questions for Mr. Hendrickson.

The Chair asked Mr. Hendrickson that he contends that there was confusion related to what exactly your client was required to do by the Board's Final Order and you also cite the submission of a money order for the payment of the administrative fine as evidence of good faith effort to be compliant, and asked how his client understood all the particulars about submitting that money order, including the amount, to the individual to whom it was to be attentioned, which was all explicated very clearly in the final order with similar clarity as the section related to the continuing education and that it seems incongruous that she understood the first part related to the administrative fine but not the part related to the continuing education and asked if he had any explanation for that at all.

Mr. Hendrickson replied yes it goes back to the heart of his argument that is the confusion around the final order. The final order is the triggering document, it triggers her obligation to submit that list of courses for approval in the 30 days and there was a timeline to follow but she is unaware of receiving the final order and so she sees the requirements of the settlement agreement but is unaware of the final order and so when she is getting close to the expiration of her license and probation she thought she was supposed to take the courses and that's when she started taking action and taking the courses.

He stated that the confusion is not what the requirements actually were but the confusion is all about the final order and when she was supposed to take action.

The Chair thanked Mr. Hendrickson.

EO Teshima asked Mr. Hendrickson to clarify that he is saying that she never got a final copy of the board's final order.

Mr. Hendrickson responded that he sees no evidence of that and I can't testify on her behalf, lawyers can't do that especially in matters that may result in litigation but he doesn't see any indication of that she received it back in October 2019 and that the only time she became aware of the deadline from what he can tell is from the most recent letters and a copy of the settlement agreement that would have been enclosed with the letter dated September 15.

EO Teshima informed Mr. Hendrickson his client did appear last year at one of the Board meetings after she received her September 15, 2021 letter and testified on record that she thought she had a year or 2 years to comply. She verified with Ms. Concepcion that she signed the settlement agreement and that she did receive a copy but didn't understand what she was signing and that this was a legal document but she was contending that she understood by paying the fine and understands the gravity of the document by paying the \$500 fine early but not paying attention to any other terms of the settlement agreement.

She also added that she will have to confirm that Ms. Concepcion actually received notice of the Board's Final Order and explained the procedure after the Board signs the Final Order.

Mr. Hendrickson said okay but that's one piece of the argument that he has not seen any evidence that she received or was aware of and the way it was executed. He said he didn't think it was fair, is very confusing the way it's packaged and written it's reasonable for her to actually in this circumstance, to be confused by when she was to take the courses.



EO Teshima said that the language in the settlement agreements are pretty standard and the Board does review these quite often and that hearing that the respondent entering into the agreement was confused by the terms of the agreement when in fact they are the ones who are “settling” with the attorney with the Regulated Industries Complaints Office but was concerned that if it wasn’t clear what she was entering into, she wanted to know that. Her concern is that when a respondent is negotiating with RICO, what is presented to them, are they (the respondent) told here just sign this document and wanted to know from Ms. Concepcion what happened when she was negotiating this.

She stated that unfortunately, the RICO attorney is not present today to respond to those questions but she will be contacting RICO because her concern is that if the respondent is not made aware of what they are getting into.

Mr. Hendrickson stated this is his first-time addressing the nursing Board and he has dealt in various aspects of administrative law and boards but typically how it goes is you have a chance to do yourself a favor and sign this agreement and that to save everybody time and expense that would be the reason why she paid that \$500 early as she was eager to comply. He stated that she wasn’t thumbing her nose to the Board or the agreement.

The Chair said she understands but just to follow-up that again one of his major components of his argument is that his client made a good faith effort to comply and was also she confused as to when the deadlines were triggered, but asked how do you explain that she did not, prior to 2021 contact the Board or RICO to clarify terms of the agreement if she did not understand.

Mr. Hendrickson said because you don’t really understand what you are confused about until you’re confused. He stated that she may go all that time and expecting the final order but doesn’t receive it or doesn’t understand that she received but either way time is getting closer to end of the term of her license or probation so that she needs to start doing these courses and one of the requirements is to do those required courses in addition to her licensing courses.

He stated also if you take a look at the dates of these certificates of completion, they are all around the same time, so she completed her licensing courses around the same time she completed those other required courses and that’s kind of what is going on in her mind and she didn’t understand that she did anything wrong until she got that letter in September 2021.

The Chair stated that she didn’t mean to be rude but you didn’t really answer my question. The question is why did she not she seek clarification from either the Board or RICO related to terms of the agreement that she did not understand. And I appreciate that you cannot testify.

Mr. Hendrickson interjected stating but that is not my argument, that’s not my argument and respectfully you’re not listening to me maybe I gave you an answer you didn’t like but that’s not my argument. My argument isn’t that she was confused, my argument is that she didn’t know, she wasn’t confused, she didn’t know. He stated that the way that notification is made, this final order is not conspicuous and he didn’t think that that applies to due process because it was inconspicuous and needs to be clear and obvious.

EO Teshima stated she understood and wanted to clarify that in the beginning, Mr. Hendrickson did say that there was confusion by Wilma so there is the word confusion.

Mr. Hendrickson clarified that the confusion was about the final order, now after the fact not at the time, not at the time the agreement was executed. He stated but now that things have unraveled at the end when you look back now she gets notified in September 2021 that she wasn't in compliance, now there's confusion. He added and to look back and say hey what's going on with this final order 2 ½ years ago, how do we really figure out what happened.

EO Teshima asked Mr. Hendrickson if he knew how Ms. Concepcion negotiated the settlement agreement with RICO?

Mr. Hendrickson said no I don't.

EO Teshima stated that it doesn't look like she had an attorney and didn't hire you at that time and so she did it herself.

Mr. Hendrickson stated he doesn't know anything about that.

EO Teshima stated that now realizing that her license can be revoked for noncompliance, then she hired you so now it looks like she's taking it more seriously because she's going to lose her license obviously, right if she's not compliant.

Mr. Hendrickson responded yes, as she should.

EO Teshima asked did she take it seriously during the settlement agreement.

Mr. Hendrickson stated I would think so.

EO Teshima apologized and stated that she understands he may not know the answer.

Mr. Hendrickson stated that's why I bring up the argument that maybe it's falling on deaf ears but the argument that she made a good faith effort by paying the fine early, she was eager to comply.

EO Teshima said yes, after the deadline, after the fact, we get that she was trying to comply after the deadline.

Mr. Hendrickson said no, before the deadline.

EO Teshima stated not for the continuing education.

Mr. Hendrickson said but the agreement is all together.

EO Teshima stated but Ms. Concepcion knew she wanted to settle this and comply and she paid the \$500 early.

Mr. Hendrickson said yes.

EO Teshima stated but she didn't pay attention to the rest of the document or the terms of the settlement agreement.

Mr. Hendrickson said she did that is demonstrated by the fact that she did email you asking for approval.

EO Teshima stated not within 30 days, that is specifically indicated in the settlement agreement.

Mr. Hendrickson stated okay, but that would require her having knowledge of the final order which is saying she didn't and as far as he can tell she didn't and it's demonstrated by the emails that she exchanged with EO Teshima that she completed these courses by the end of her license period.

EO Teshima thanked Mr. Hendrickson.

The Chair asked if anyone else had questions.

Ms. Daub stated that she had a comment for Mr. Hendrickson that in looking at the board's final order for noncompliance with the settlement agreement format that she has looked at these for over 12 years and I have not experienced a great deal of confusion in this legal document. Number 1, number 2, number 3 and number 4 in her mind clearly outlines and the front on page 1, what the requirements were and she just wanted to comment that she is having a hard time understanding what the great confusion was with the document and with compliance.

Mr. Hendrickson stated he's seen a lot of notifications and this is probably the most confusing one that he's ever seen and he's been doing this well over 12 years myself, so a notification to comply with due process, his argument is that this should be clear and conspicuous but not in this case and referenced the signature page of the board's final order and stated that maybe it's time to relook at your practices but he is not here to change the system, but believe in this case, it's reasonable for someone looking at this to say this could be easily confused.

He stated that the subject line, like one page of the signature document, has 3 lines in the subject matter and indicates "final order" but combined with other terms that somebody may not understand that now their obligations are triggered, especially when you compare it to other documents that were sent, those were very clear. He stated why don't you do it with the final order since that's the most important document here.

Ms. Daub thanked Mr. Hendrickson and apologized for taking up more time but she had one more comment for Mr. Hendrickson. She stated that the board of nursing is tasked with protecting the public, and she there is an expectation for those that care for us that are in our profession, that when there is confusion especially when it is related to their license to practice, then it could be assumed, that that professional would seek clarification and I am concerned that the payment of \$500 certified was made even a little early but that was clear so that would be my last comment to you sir.

EO Teshima asked if she could make one more comment to Mr. Hendrickson. She stated there was some confusion with the terms of the settlement agreement, Ms. Conception may not have understood the initial board's final order but when she received my September 2021 letter and the proposed order to revoke her license for noncompliance, it appears she hired you so she clearly understood that document.

Mr. Hendrickson said I'm starting to sound like a broken record that was a clear document, there is no mistaking what that document was all about as opposed to the final order that wasn't clear.

EO Teshima apologized to Mr. Hendrickson for having to repeat himself.

The Chari thanked Mr. Hendrickson and informed him that at this time the BON will be recessing to deliberate over what we've heard and called for a recess at 11:25 a.m.

At 12:09, the BON resumed the meeting.

The Chair addressed Mr. Sanchez, apologizing that she misstated that the Board deferred his application and request that he obtain an assessment from Pu'lulu Lapa'au but the Board did approve his application.

Mr. Sanchez raised his hand and was promoted to panelist.

Mr. Sanchez thanked the Board.

In the Matter of the License to Practice Nursing of **Wilma V. Concepcion; RNS-2018-16-L**; Board's Final Order for Non-Compliance Settlement Agreement

The Chair stated that the Board took under advisement the arguments presented by Mr. Hendrickson and after deliberation the Board decided that rather than revoking Ms. Concepcion's license that instead, the Board orders the following:

- 1) That Ms. Concepcion's RN license will be placed on probation for a minimum of 5 years;
- 2) That during the probationary period, should she have any incident, termination any type of interaction with her employer that is a result of her incompetence to practice nursing, that it shall be reported to the Board of Nursing;
- 3) That after five years should Ms. Concepcion want the probation removed from her license, she must petition the Board that is accompanied by a letter from her employer indicating that she is capable and has been safely and competently practicing nursing;
- 4) In addition to the probationary period, Ms. Concepcion shall be required to take the following NCSBN Learning Extension courses and submit the proof of completion directly to the EO of the courses by March 31, 2022:
  - Professional Accountability and Legal Liability for Nurses;
  - Sharpening Your Critical Thinking: Think on your fee in today's highly complex health environment; and
  - Disciplinary Actions: What Every Nurse Should Know, Protect your nurse licensure by learning about the regulations that govern nursing practice.

Ms. Kodama clarified that it will be mailed to the attorney.

Next Meeting:

Thursday, March 3, 2022  
9:00 a.m.  
Virtual

The Chair asked if everyone can make it and announced that there will be an Education Committee meeting immediately following the Board meeting next month.

Adjournment: With no further business to discuss, the Chair adjourned the meeting at 12:15 p.m.

Taken by:

Reviewed and Approved by:

/s/ Lee Ann Teshima  
Lee Ann Teshima  
Executive Officer

/s/ Chelsea Fukunaga  
Chelsea L. Fukunaga  
Executive Officer

LAT

02/25/22

[ X ] Minutes approved as is.

[ ] Minutes approved with changes; see minutes of \_\_\_\_\_