

Arizona State Board of Nursing

Janice K. Brewer
Governor

Joey Ridenour
Executive Director



Board Meeting Minutes

The special meeting of the Arizona State Board of Nursing convened at 10:02 a.m., Tuesday, May 10, 2011, in the Board of Nursing Board Room, Suite 200, 4747 N. 7th Street, Phoenix, Arizona, with Kathy Scott, RN, MPS, PhD, FACHE, President, presiding.

BOARD MEMBERS PRESENT:

Kathy Scott, RN, MPA, PhD, FACHE, President (telephonic)
Kathy Malloch, PhD, MBA, RN, FAAN, Vice President
Theresa (Terri) Berrigan, LPN, Member
Kathryn L. Busby, JD, Member
Leslie Dalton, MSN, RN, Member (telephonic)
Denise Link, PhD, WHCNP, FNAP, Member
M. Hunter Perry, BSHA, Member (telephonic)
Charleen L. Snider, BSN, RN, Member (telephonic)

BOARD MEMBERS ABSENT:

Patricia Johnson, LPN, Secretary
Lori Gutierrez, BS, RN-C, Member
Randy C. Quinn, CRNA, Member

LEGAL COUNSEL:

Emma Mamaluy, Assistant Attorney General
Kim Zack, Assistant Attorney General

STAFF DIRECTORS:

Joey Ridenour, RN, MN, FAAN, Executive Director
Pamela Randolph, RN, MSN, Associate Director of Education and Evidence Based Regulation
Valerie Smith, RN, MS, Associate Director of Investigations

STAFF:

Barbara Melberg, Legal Secretary

I. Call to Order

The meeting was called to order at 10:02 a.m., Tuesday, May 10, 2011.

The following Board members were present: Scott, Malloch, Berrigan, Link, Snider, Dalton, Perry, and Busby.

Scott presided.

III.A. Consider Motion for Review and Request of Consideration of Signed Consent Agreement

III.A.1. Erin Rauscher RN076916; AP0355 Mamaluy

Malloch arrived at the meeting at 10:04 a.m.

Mamaluy addressed the Board and recommended the Board accept the signed Consent Agreement as attached.

Malloch recused herself from this case.

Attorney Teresa Sanzio was present and addressed the Board also requesting the Board accept the signed Consent Agreement.

Busby moved, Link seconded, to accept and adopt the signed Consent Agreement for a \$200 Administrative Penalty. The motion carried with seven in favor and one abstained.

| | VOTE | Berrigan Member | Link Member | Quinn Member | Snider Member | Johnson Secretary | Scott President | Malloch V. Pres. | Dalton Member | Perry Member | Gutierrez Member | Busby Member |
|---------|------|--------------------|----------------|-----------------|------------------|----------------------|--------------------|---------------------|------------------|-----------------|---------------------|-----------------|
| YES | 7 | X | X | | X | | X | | X | X | | X |
| NO | 0 | | | | | | | | | | | |
| ABSTAIN | 1 | | | | | | | X | | | | |
| ABSENT | 3 | | | X | | X | | | | | X | |

III.A.2. Ashley Marie Zerbel RN158213; LP044459; CNA1000007430 Mamaluy

Mamaluy addressed the Board and recommended the Board accept the signed Consent Agreement as attached

Busby moved, Link seconded, and it was unanimously carried to accept the signed Consent Agreement for suspension with terms.

| | VOTE | Berrigan Member | Link Member | Quinn Member | Snider Member | Johnson Secretary | Scott President | Malloch V. Pres. | Dalton Member | Perry Member | Gutierrez Member | Busby Member |
|---------|------|--------------------|----------------|-----------------|------------------|----------------------|--------------------|---------------------|------------------|-----------------|---------------------|-----------------|
| YES | 8 | X | X | | X | | X | X | X | X | | X |
| NO | 0 | | | | | | | | | | | |
| ABSTAIN | 0 | | | | | | | | | | | |
| ABSENT | 3 | | | X | | X | | | | | X | |

II.A. A.A.G. Report –

II.A.1. Discussion & Decision on Litigation Matters – Mamaluy/Zack/Campbell

II.A.1.a. Heather Walker v. AzBN et al. – Maricopa County Superior Ct. Case No. LC2011-000276-001 DT - Zack

Attorney Teresa Sanzio and Walker were present.

Busby moved, Berrigan seconded, and it was unanimously carried to go into Executive Session on Agenda Item II.A.1.a. After discussion Busby rescinded the previous motion. Busby moved, Berrigan seconded, and it was unanimously carried to go into Executive Session on Agenda Item II.A.1.a. to obtain legal advice, and to consult with and instruct the Board's attorneys regarding the Board's position

in pending litigation or in settlement discussions pursuant to A.R.S. § 38-431.03(A)(3) and (4). Executive Session convened at 10:15 a.m. and adjourned at 10:55 a.m.

Malloch presided.

Busby moved, Link seconded, to direct Assistant Attorney General (A.A.G) to accept the direction provided to them in Executive Session. Upon request from attorney Sanzio, Busby summarized the Board's position regarding the pending litigation. The motion carried unanimously.

Zack addressed the Board and recommended settling the JRA pending. One of the options suggested was to agree to remand the matter back to the Board for purposes of resolving it on the merits in lieu of litigating the JRA. Zack suggested that, if Walker would agree to dismiss the JRA with prejudice and admit to the factual allegations and conclusions of law in the Notice of Charges, the Board should offer a Consent Agreement for a 12 month stayed revocation/probation with terms.

Attorney Sanzio addressed the Board and recommended the stay of revocation remain in effect and return to the May 2011 Board meeting after having the opportunity to meet with staff and negotiate omitting factual allegations and conclusions of law to which Walker did not agree. She further recommended the stayed revocation/probation be 6 months rather than the suggested 12 months.

Busby moved, Berrigan seconded, and it was unanimously carried to table Agenda Item II.A.1.a.

IV. Board Reports for Discussion, Information, Staff Direction and/or Decision

IV.A. Executive Director's Report – Ridenour

IV.A.1. Auditor General – Sunset Draft Final Report

Pursuant to A.R.S. §38-431.03(A)(2), the Board may meet in Executive Session to receive confidential information about the sunset audit of the Board

Busby moved, Berrigan seconded, and it was unanimously carried to go into Executive Session on Agenda Item IV.A.1. to receive confidential information about the sunset audit of the Board pursuant to A.R.S. §38-431.03(A)(2). Executive Session convened at 11:10 a.m. and adjourned at 11:21 a.m.

Busby moved, Scott seconded, and it was unanimously carried to send the short version letter in response to the sunset audit.

The meeting recessed at 11:23 a.m. and reconvened at 11:30 a.m.

II.A. A.A.G. Report –

II.A.1. Discussion & Decision on Litigation Matters – Mamaluy/Zack/Campbell

II.A.1.a. Heather Walker v. AzBN et al. – Maricopa County Superior Ct. Case No. LC2011-000276-001 DT - Zack

Busby moved, Berrigan seconded, and it was unanimously carried to reopen Agenda Item II.A.1.a.

Walker and attorney Teresa Sanzio were present and Sanzio addressed the Board. She requested the addition of an assertion that, at all times relevant, Walker visited the patients and documented on each patient and did not falsify any patient records. With respect to finding of fact 15, to include an assertion that respondent did not receive the phone messages or the mail as related to her not responding to communication from the Board, and conclusions of law R 419-403 (15) be deleted.

Zack clarified to the Board that her role in this JRA case is Board advisor as to appropriate terms of a settlement. She stated that the paragraph attorney Sanzio was suggesting was, in her opinion, a blanket denial of the facts and that it would appear that Walker wasn't ready to settle the case. She suggested

leaving the stay of revocation in place if Walker would agree to remand the case and set a hearing in return for a dismissal of the JRA.

Busby moved, Scott seconded, and it was unanimously carried to offer a Consent Agreement for 12 months stayed revocation/probation with terms, in exchange for the oral motion for dismissal with prejudice of the JRA at the May 11, 2011 status conference hearing in Superior Court, with the stay of revocation to remain in effect during the interim. If not signed within 30 days, proceed to hearing.

| | VOTE | <u>Berrigan</u> Member | <u>Link</u> Member | <u>Quinn</u> Member | <u>Snider</u> Member | <u>Johnson</u> Secretary | <u>Scott</u> President | <u>Malloch</u> V. Pres. | <u>Dalton</u> Member | <u>Perry</u> Member | <u>Gutierrez</u> Member | <u>Busby</u> Member |
|---------|-------------|---------------------------|-----------------------|------------------------|-------------------------|-----------------------------|---------------------------|----------------------------|-------------------------|------------------------|----------------------------|------------------------|
| YES | 8 | X | X | | X | | X | X | X | X | | X |
| NO | 0 | | | | | | | | | | | |
| ABSTAIN | 0 | | | | | | | | | | | |
| ABSENT | 3 | | | X | | X | | | | | X | |

V. Call to the Public

A public body may make an open call to the public during a public meeting, subject to reasonable time, place and manner restrictions, to allow individuals to address the public body on any issue within the jurisdiction of the public body. The Board may ask staff to review a matter or may ask that a matter be put on a future agenda. Members of the public body shall not discuss or take legal action on matters raised during an open call to the public unless the matters are properly noticed for discussion and legal action. A.R.S. § 38-431.01(G).

VI. Adjournment

Busby moved, Berrigan seconded, and it was unanimously carried to adjourn the meeting.

The meeting adjourned at 11:48 a.m., Tuesday, May 10, 2011.

Kathy Scott, RN, MPA, PhD, FACHE, President