

# 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 8:00 a.m., Thursday, June 17, 2010, in the Board of Nursing Board Room, Suite 200, 4747 N. 7<sup>th</sup> Street, Phoenix, Arizona, with Kathy Malloch, PhD, MBA, RN, FAAN, President, presiding.

### BOARD MEMBERS PRESENT:

Kathy Malloch, PhD, MBA, RN, FAAN, President  
Kathy Scott, RN, MPA, PhD, FACHE, Secretary  
Terri Berrigan, LPN, Member  
Kathryn L. Busby, JD, Member  
E. Gary Gum, MSN, RN, FCN, Member  
Lori Gutierrez, BS, RN-C, RAC-CT, CBN  
Patricia Johnson, LPN, Member  
M. Hunter Perry, Member (telephonic)

### BOARD MEMBERS ABSENT:

Denise Link, PhD, WHCNP, FNAP, Vice President

### LEGAL COUNSEL:

Elizabeth Campbell, Assistant Attorney General  
Kim Zack, Assistant Attorney General  
Nina Zimmerman, Assistant Attorney General

### STAFF:

Joey Ridenour, RN, MN, FAAN, Executive Director  
Judy Bontrager, RN, MN, Associate Director of Operations  
Pamela Randolph, RN, MSN, Associate Director of Education and Evidence Based Regulation  
Valerie Smith, RN, MS, Associate Director of Investigations  
Susan Barber, RN, MSN, Nurse Practice Consultant/Hearings  
Judy Pendergast, RN, JD, Nurse Practice Consultant  
Deborah Richards, JD, Senior Investigator  
Bonnie Richter, MSW, Senior Investigator  
Barbara Melberg, Legal Secretary

## **I. Call to Order**

The meeting was called to order at 8:00 a.m., Thursday, June 17, 2010.

The following Board members were present: Malloch, Scott, Johnson, Gutierrez, Gum, Perry (telephonic), Berrigan and Busby.

Malloch presided.

Malloch welcomed members of the audience and explained the procedure for addressing the Board.

Ridenour reported that Agenda Item II.A.1. was pulled from the Agenda and would be brought back to the July 2010 Board meeting.

Elizabeth Campbell introduced herself as Assistant Attorney General on staff replacing Hargraves.

### **III.B.1. Benjamin Scott Tway TRN162358 (Monas)**

Scott moved, Gum seconded, and after discussion, it was unanimously carried, upon meeting all requirements, grant licensure and issue a Letter of Concern for the February 12, 2009, conviction in the Muskego City Municipal Court of Operating under the Influence, a misdemeanor.

## **III. RN/LPN/CNA Investigative Reports**

### **III.A. Brandy Byrum Page RN161073 (S. Nelson)**

Smith addressed the Board with additional information. Scott moved, Johnson seconded, and it was unanimously carried to accept the signed Consent Agreement.

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

### **IV.A. Executive Directors Report – Ridenour**

#### **IV.A.1. Proposed AzBN Strategic Initiatives FY 2011-2014: Smith/Bontrager/Randolph/Ridenour**

Ridenour reported that information and suggestions made by the Board at the May 2010 meeting had been incorporated and were placed on this Agenda for further consideration or approval. Clarifications were discussed and changes made. Ridenour inquired of Malloch if she thought the AzBN proposed initiatives integrated with National Council's proposed initiatives. Malloch stated that National Council had included an initiative to lessen the burden of member Boards with content experts and technology resources. Malloch also mentioned NCSBN's initiative relating to relationships between Boards of Nursing in compact states and Boards of Nursing in non compact states. Busby moved, Berrigan seconded, and it was unanimously carried to approve proposed AzBN Strategic Initiatives FY 2011-2014.

#### **IV.A.2. Proposed Policy Changes:**

##### **IV.A.2.b. Proposed Substantive Policy Changes – Alcohol &/or Drug Investigative Guidelines - Smith**

Smith discussed with the Board, revisions to the current substantive policy statement on investigative and disciplinary guidelines, which reflects policy changes and most common Board decisions since the last substantive policy was put in place more than ten years ago. The Board requested a more clearly defined policy on at risk populations, and a condensed form of the policy for quick review. Busby moved, Scott seconded, and it was unanimously carried to approve the proposed Substantive Policy Changes for Alcohol &/or Drug Investigative Guidelines, including Board suggestions.

**IV.A.2.a. Substance Use Disorder Guidelines for CANDO & Discipline Monitoring – Smith**  
Ridenour stated this Agenda Item would be brought to the July 2010 meeting.

**IV.A.3. Proposed Policy: Request for Continuance after Investigative/Hearing Case is placed on Agenda – Zack/Zimmerman/Campbell/Smith/Ridenour**

The Board and staff discussed proposed policy changes. Busby questioned if a scheduling conflict should not constitute good cause for the Board to approve continuance. Attorney's Lisa Gervase and Teresa Sanzio were present and addressed the Board with comments and concerns about the proposed policy. Scott moved, Gum seconded, and after further discussion, it was unanimously carried to accept the proposed Policy: Request for Continuance after Investigative/Hearing Case is placed on Agenda, amended to change, "Examples of requests that do not constitute good cause for a continuance are as follows:", to "Examples of requests that generally do not constitute good cause for a continuance are as follows:".

**IV.A.4. Proposed Policy Changes: Mandatory Reporting of Arrests – Smith**

Smith gave an overview of the changes to Mandatory Reporting of Arrests Policy, last revised in 2004, and requested suggestions for additions to the policy.

Zack suggested the addition of animal abuse and cruelty. The Board agreed it should be added to the policy.

Attorney Teresa Sanzio voiced concern about licensee's who do not have attorney representation may not have knowledge of the policy. She asked that some categories such as shoplifting be matched with the case disposition criteria crimes and stated that the definition of criminal charges should be clearer. Smith noted there was a reference to the policy on the Board website, but one of the suggestions being brought to the Board was to post reportable crimes on the website. Smith further stated that no case that meets the criteria for opening is case disposed, until the investigation has been completed and the criteria for case disposition is met.

The Board further discussed criminal charges and if people understand what they mean.

Malloch suggested placing the policy in the Board Regulatory Journal, with a definition of criminal charges such as misdemeanor.

Campbell stated that the Board clarifying criminal charges further would constitute giving legal advice, which is not within the Board's purview. It is the licensee/applicant's responsibility to find clear definition.

Sanzio stated that the issue of a nurse not reporting the charges until their renewal, when the nurse is beyond the allowed ten days to report, and is sanctioned by the Board for not reporting within 10 days, becomes a problem.

Zack noted that Az Revised Statute 32-3208 is referenced in the NPA to the extent that it's in the Rules for both nurses and certified nursing assistants.

Malloch suggested a notice and brief explanation be placed in the Board Journal regarding the revised policy.

Attorney Lisa Gervase stated that other healthcare regulatory Boards' websites include detailed offenses for reportable crimes.

Smith stated the Board reviewed reportable crimes in 2004 and determined that many were not directly related to patient safety, which was the reason for developing a list for this Board.

Busby moved, Scott seconded, and it was unanimously carried to approve the proposed policy changes to include animal abuse. The policy will also be published in the Journal and placed on the website.

**IV.A.5. Request for Quote – Board of Nursing Evaluators – Smith/Bontrager/Ridenour**

Bontrager reported the Request for Quote (RFQ) had been sent to procurement. The RFQ will be put out for solicitation for three weeks. Types of evaluations were discussed and Scott expressed concern that criteria for evaluating nurse competency were not clearly defined. Ridenour stated that nurse competency evaluations were infrequent, and selection of a person to evaluate are considered on a case by case basis.

Suggestions were made by the Board for adding to the Levels of Evaluators, or redefining competency under Types of Evaluations. Ridenour suggested making it a separate RFQ, which would allow more time to develop this portion, but allow the remainder to move forward. The Board agreed.

Busby moved, Scott seconded, to accept Request for Quote – Board of Nursing Evaluators, with the addition of qualification clarification as noted, and with separate work to be completed and policy brought back to the Board on competency practice. Malloch inquired about financing and Ridenour stated the funds will come from line accounts, and open staff positions not being filled. The motion carried unanimously.

**IV.A.8. Psychological/Mental/Other Evaluation Survey from Boards of Nursing - Ridenour**

Ridenour provided a summary of Malloch’s request to discover what other states were doing in relation to mental evaluations, the statutory language, and how this Board compares to other states. Board and staff discussed the findings.

**IV.A.7. AHCCCS – Self Directed Attendant Care – Randolph/Ridenour**

Information was provided to the Board from the rulemaking opened with AHCCCS – Self Directed Attendant Care.

**IV.A.6. Explore Potential Supplemental Attorney Services for Legal Matters Outside Public Interest - Ridenour**

Ridenour reported on a letter received by the Board in response to Deputy County Attorney Margaret Woo regarding a previous employee who had been subpoenaed. It was found that even though a response can be made on the State’s behalf, once a person leaves the Board or the staff, the individual can no longer receive legal advice from staff AAG’s. Ridenour identified the need to explore the possibility of obtaining legal resources for those no longer on the staff or Board. Ridenour noted the purpose of the draft was to understand the issues, with future clarification, what to do to provide everyone some amount of representation should issues arise in the future, and to compliment what the AAG’s do.

Zack suggested obtaining advice from Monte Lee.

Berrigan moved, Busby seconded, and it was unanimously carried, to table Agenda Item IV.A.6.

The meeting recessed at 9:37 a.m. and reconvened at 9:53 a.m.

**IV.B. President’s Report – Malloch**

**IV.B.1. 2010 NCSBN Delegate Assembly Recommendations - Malloch**

**IV.B.1.a. Summary of Recommendations to the 2010 Delegate Assembly with Rationale**

**IV.B.1.b. Guiding Principles for Continued Competence**

**IV.B.1.c. British Columbia Application**

**IV.B.1.d. Proposed 2010 Bylaw Revisions**

**IV.B.1.e. Proposed 2010 NCLEX-PN Test Plan**

**IV.B.1.f. Proposed Sexual Misconduct Model Rules**

Malloch briefly went over 2010 NCSBN Delegate Assembly recommendations regarding Agenda Items IV.B.1.a-f.

**IV.B.2.g. Proposed Mission, Vision, Values**

Ridenour requested Malloch to comment on NCSBN's proposed Mission, Vision Values statement. Discussion centered on whether the statement described the purpose of the Board and who it exists for. Malloch read the draft statement: Through collaborative leadership, the National Counsel State Boards of Nursing (NCSBN) provides education, service and research to promote regulatory excellence for patient safety and public protection.

Ridenour questioned if the public would understand the primary focus of the organization, and that the NCSBN was synonymous with member Boards and associates. The public mostly associate NCSBN with NCLEX.

Malloch stated that through collaborative leadership changes were made to go beyond the member Boards. .

The Board discussed clarification of wording for better understanding of the intended purpose.

Malloch suggested that Board or staff members attending the Delegate Assembly should present recommendations for revised language. The Board agreed to return the proposed Mission, Vision, Values Statement to the July 2010 Board meeting for further discussion.

**IV.B.1.h. Proposed Strategic Initiatives**

Malloch briefly reviewed the recommendations regarding Agenda Items IV.B.1.h.

**IV.B.1.i. 2010 Slate of Candidates**

Malloch noted National Counsel had requested that Johnson re-apply for the position she previously held, and reported that Scott would also be running for office. After discussion Gum agreed to consider running for office as well.

**IV.B.2. Update on Board Member Appointments – Malloch/Ridenour**

Ridenour reported there had been no word from the Governor's office regarding the three open Board appointments.

**IV.C. A.A.G. Report – Zack/Zimmerman/Campbell**

**IV.C.1. Discussion & Decision on the following litigation matters**

Upon a majority vote of a quorum of members, the Board may hold an Executive Session pursuant to A.R.S. § 38-431.03(A)(3) and (4), 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)

**IV.C.1.c. Notice of Claim: Greg Tidrick RN and Richard Henely RN – Terry Harrison/Liability Management Section**

Gum moved, Busby seconded, and it was unanimously carried to go into Executive Session on Agenda Item IV.C.1.c. for the purpose of obtaining legal advice, and to consult with and instruct the Board's attorneys regarding the Board's position in pending litigation. Executive Session convened at 10:09 a.m. and adjourned at 10:48 a.m.

**IV.C.1.a. Henely v. AzBN – Maricopa Cty Superior Ct. Case No. CV2008-053094**

**IV.C.1.b. Slusser & West v. AzBN, et al. – Maricopa Cty Superior Ct. Case No. LC2010-000300**

Zack stated that Agenda Items IV.C.1.a & b. have no updates at this time and no settlement has been reached.

**IV.C.2. Update, Discussion & Possible Decision on Request to Rescind Prior Board Decision to Consider Alternative Action on the Following**

(Upon a majority vote of a quorum of members, the Board may hold an Executive Session pursuant to A.R.S. § 38-431.03(A)(3) to obtain legal advice)

**IV.C.2.a. Richard Joseph Henely – RN046579**

Zack reported there were no updates at this time. Attorney Teresa Sanzio addressed the Board with a request for the Board to have Board staff revisit the specific facts of the allegations occurring in 2004. Zack stated that Sanzio’s proposal is not possible at this point because Henely brought the additional action still pending in superior court. She further stated that the parties and the administrative law judge agreed to stay the administrative proceedings pending the outcome of the legal issues. The Board agreed no decision should be made at this time.

**IV.C.3. Update: Criminal Cases Subject to Board’s Felony Bar Statute – Zack/Zimmerman/Campbell**

Zack stated the position of the attorney general’s office is now to treat all undesignated offenses as felonies for all purposes until otherwise designated by the court, for purposes of felony bar statutes, which is a new interpretation. Zack requested the Board to move on a decision and apply it prospectively so licensees and members of the public have notice and can make their decisions accordingly when faced with a plea agreement.

Attorney Teresa Sanzio addressed the Board stating she feels this change will open the floodgates to litigation and feels the Board’s position should remain unchanged.

Zack replied that two superior court judges adopted the position in Arizona suggesting that it’s an accurate interpretation and does protect the public.

Busby voiced concern over an undesignated offense being considered a five year felony bar with the possibility of a judge changing the offense.

Zack stated that Arizona criminal statutes say that the legislature says it is a felony and not within the Board’s discretion.

Gum inquired how a criminal charge becomes undesignated.

Zack responded that it’s within the statutory discretion for a judge to look at an offense that’s non dangerous or non repetitive, to decide to withhold designating the offense to allow the person to go through a probationary period, and if complied with could prevent them from having a felony on their record.

Monte Lee addressed the Board and suggested the Board go into Executive Session.

Busby moved, Berrigan seconded, and it was unanimously carried to go into Executive Session on Agenda Item IV.C.3. for the purpose obtaining legal advice. Executive Session convened at 11:14 a.m. and adjourned at 11:28 a.m.

Busby moved, Scott seconded, and it was unanimously carried to request the AAG’s to bring the matter back to the July 2010 Board meeting with information regarding how other Boards with the felony bar statute, are interpreting *Beren*, what types of offenses are “undesignated,” and when would a change in position take effect.

**IV.A.6. Explore Potential Supplemental Attorney Services for Legal Matters Outside Public Interest - Ridenour**

Perry moved, Scott seconded, and it was unanimously carried to reopen Agenda Item IV.A.6. Ridenour requested this matter be tabled. Perry moved, Scott seconded, and it was unanimously carried to table Agenda Item IV.A.6. until the July 2010 Board meeting.

**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 11:34 a.m., Thursday, June 17, 2010.

---

Kathy Malloch, PhD, MBA, RN, FAAN, President