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FLORIDA | Board of Nursing Home Administrators

November 20, 2015

Teleconference
Florida Department of Health
4042 Bald Cypress Way
Tallahassee, Florida 32399



Henry Gerrity, III, NHA
Chair

Scott Lipman, MHSA, NHA
Vice-Chair

Anthony Spivey, DBA
Executive Director

1 **General Board Business started: 10:02 a.m.**

2 I. The meeting was called to order by Mr. Gerrity, Chair. Those present for all or part of the meeting included the following:

3
4 **MEMBERS PRESENT:**

5 Henry Gerrity, III, NHA, Chair
6 Scott Lipman, MHSA, NHA, Vice-Chair
7 Michael Helmer, BA
8 Patricia Feeney, RN, BSN, HCRM
9 Christine Hankerson, MSN, MS/P, PhD, RN
10 William Phelan, MS, CAE

11 **STAFF PRESENT:**

Anthony Spivey, DBA, Executive Director
Joseph Lesho, Program Operations Administrator
Michele L. Jackson, Regulatory Consultant Supervisor
Edith Rogers, Administrative Assistant II

12 **NOT PRESENT:**

13 Chantelle Fernandez, MBA, NHA (absence excused by the chair)

14 **BOARD COUNSEL:**

15 Lawrence Harris, Assistant Attorney General
16 Office of the Attorney General

17 **COURT REPORTER:**

18 For the Record Reporting
19 Phone: (850) 222-5491
20 Contact: Kay Fitchner

21 *Please note the minutes reflect the actual order agenda items were discussed and may differ from the agenda outline. AUDIO from this meeting can be found online: <http://floridasnursinghomeadmin.gov/meeting-information/>*

22 **Section II started at 10:02 a.m.**

23 **II. APPROVAL OF MEETING MINUTES:**

24 **a. September 17, 2015 – Rules Workshop**

25 Minutes of the September 17, 2015 Rules Workshop meeting were reviewed.

26 **Action:** Motion to accept the minutes as written was made by Mr. Helmer. Seconded by Mr. Phelan.
27 Vote: 6 yeas / 0 opposed; motion carried

28 **b. September 18, 2015 – Full Board Meeting**

29 Minutes of the September 18, 2015 Full Board meeting were reviewed.

30 **Action:** Motion to accept the minutes as written was made by Ms. Feeney. Seconded by Mr. Gerrity.
31 Vote: 6 yeas / 0 opposed; motion carried

32 **Section II concluded at 10:03 a.m.**

33 **Section III started at 10:03 a.m.**

34 **III. FINAL ORDER ACTION:**

35 **a. Voluntary Relinquishment –**

36 **i. Christopher Lee Gabel 2014-07474**

37 Mr. Gabel was not present and was not represented by counsel.

38 Mr. Harris explained that an investigation was conducted by the department related to criminal charges, and in lieu of discipline, Mr. Gabel opted to voluntarily relinquish his license.

1 **Action:** Motion to accept the voluntary relinquishment was made by Mr. Gerrity. Seconded by Dr. Hankerson.
2 Vote: 6 yeas / 0 opposed; motion carried
3

4 **Section III concluded at 10:05 a.m.**

5 **Section IV started at 10:05 a.m.**

6
7 **IV. APPLICANTS PRESENTED FOR BOARD REVIEW:**

8
9 **a. Administrator-in-Training Program**

10
11 **i. Benjamin R. Fresby**

12 Mr. Fresby was present and was not represented by counsel.

13
14 Mr. Fresby submitted an application for the 1000-hour AIT program; however, the Credentialing Committee determined
15 that Mr. Fresby did not meet the educational requirements for the 1,000-hour program, and recommended that he be
16 approved for the 2000-hour program based upon his education. The application and supporting documentation were
17 presented to the Full Board for discussion at the request of Mr. Fresby to consider approving his application for the
18 1000-hour program.

19
20 **Discussion:**

21 Mr. Fresby provided the board with additional information related to his education and training.

22
23 After discussion by the board regarding Mr. Fresby's qualifications and the application that was submitted, a motion was
24 made.

25
26 **Action:** Motion to deny the application for the 1000-hour AIT program and approve the 2000-hour AIT program was
27 made by Mr. Gerrity. Seconded by Dr. Hankerson.

28 Vote: 6 yeas / 0 opposed; motion carried
29

30 **b. Nursing Home Administrator**

31
32 **i. Stacey Lynn Lopriore**

33 Ms. Lopriore was present and was not represented by counsel.

34
35 Ms. Lopriore submitted an application for Nursing Home Administrator licensure by examination, which was received
36 on October 10, 2015; however, the Credentialing Committee determined that Ms. Lopriore did not meet the requirements
37 to qualify through the examination process via one year of management experience. The application and supporting
38 documentation were presented to the Full Board for discussion at the request of Ms. Lopriore.

39
40 **Discussion:**

41 Ms. Lopriore provided the board with additional information related to her education and training. She stated that she
42 completed a 1000-hour AIT program in the State of Ohio.

43
44 Dr. Hankerson stated that there was not enough information provided to determine whether or not the Ohio AIT program
45 was sufficient.

46
47 Rather than denying the application, the board presented Ms. Lopriore with the option of withdrawing the application, so
48 as not to have a denial show on her record. Ms. Lopriore agreed to withdraw her application.

49
50 **Action:** Motion to accept the withdrawal of the application for Nursing Home Administrator licensure was made by Mr.
51 Gerrity. Seconded by Dr. Hankerson.

52 Vote: 6 yeas / 0 opposed; motion carried
53

54 **Section IV concluded at 10:27 a.m.**

55 **Addendum Item started at 10:27 a.m.**

56
57 **ADDENDUM ITEM:**

1 **PETITIONS:**

2
3 **Variance/Waiver –**

4
5 **i. Negovan Mamic**

6 Mr. Mamic was not present and was not represented by counsel.

7
8 At the September 18, 2015 meeting of the Full Board, the board approved Mr. Mamic for the 2000-hour AIT program.
9 Upon further review, it was determined that the facility at which Mr. Mamic’s training was to take place did not meet the
10 60-bed requirement established by Rule 64B10-16.003, F.A.C. On November 3, 2015, a Petition for Variance/Waiver
11 from Rule 64B10-16.003, F.A.C. from Mr. Mamic was filed, requesting that the board waive the 60-bed requirement and
12 allow Mr. Mamic to continue his training at The Gardens at Depugh Nursing Center.

13 **Discussion:**

14 Mr. Gerrity stated that though the petition pointed out that the board approved an AIT to train at Depugh in May 2013, a
15 mistake in the past does not change the rule going forward.

16 Mr. Harris agreed and pointed out that though the board has the authority waive rules, the past mistake should not be
17 considered.

18 Mr. Gerrity made a motion to deny the petition, which was seconded by Dr. Hankerson, but additional discussion ensued
19 before a vote was taken.

20 Ms. Feeney pointed out that the board should have known that the facility did not meet the rule requirements, and that in
21 the interest of fairness they should grant the petition.

22 After discussion regarding the reason for the 60-bed requirement, Mr. Gerrity withdrew his motion and Dr. Hankerson
23 withdrew her second.

24 **Action:** Motion to approve the Petition for Variance or Waiver was made by Ms. Feeney. Seconded by Mr. Lipman.
25 Vote: 6 yeas / 0 opposed; motion carried

26 **Addendum Item concluded at 10:54 a.m.**

27 **Section V started at 10:54 a.m.**

28
29 **V. CONTINUING EDUCATION COURSE APPLICATIONS:**

30
31 **a. Provider – QUE TECH, LLC a/k/a CARE CEUS**

32 At the June 26, 2015 full board meeting, the board voted to suspend the approval of Que Tech, LLC until their course
33 submissions complied with the board’s continuing education rules. Que Tech, LLC worked with board staff to resubmit their
34 courses. The resubmitted materials were presented to the board for review.

35 **Discussion:**

36 Dr. Hankerson stated that their website still had courses advertised where the hours awarded were not in compliance with the
37 board’s continuing education rules.

38 Mr. Harris suggested the possibility that the provider was still not submitting all of the courses that they offer.

39 **Action:** Motion to find non-compliance and require Que Tech, LLC to demonstrate compliance by re-submitting for approval
40 all of the courses that they offer in Florida was made by Dr. Hankerson. Seconded by Mr. Gerrity.

41 Vote: 6 yeas / 0 opposed; motion carried

42 **Section V concluded at 11:06 a.m.**

43 **Section VI started at 11:06 a.m.**

44
45 **VI. AHCA EXEMPTION:**

46
47 **a. Keith Allan Franklin**

1 Mr. Franklin was present and was not represented by counsel.

2 Ms. Feeny recused herself from the discussion because she was unable to review the electronic materials.

3
4 Mr. Franklin submitted an application for the AIT program and a Background Screening Application for Exemption from the
5 Agency for Health Care Administration. Mr. Franklin indicated that he is applying for employment with a health care
6 provider in a position that does not require licensure or certification, but must obtain an exemption before he can work.

7
8 **Discussion:**

9 Mr. Franklin explained to the board what he has done since the incident that lead to his arrest.

10
11 Mr. Harris explained that according to s. 456.0635, F.S., Mr. Franklin is disqualified from licensure until August 2020 due to
12 the nature of his criminal history. He stated that the AIT registration may not be considered licensure, but even if he obtains
13 the registration and completes a training program, he will still have issues with obtaining a full license.

14
15 Mr. Phelan asked if the 10 year provision could be waived. Mr. Harris stated no because the provision is statutory, and there
16 are no provisions allowing for a waiver.

17
18 Mr. Gerrity asked how long the AHCA exemption would be granted if the board voted to approve it. Mr. Harris explained
19 that the exemption would be permanent as it relates to the board, as long as no new incidents occur in the future.

20
21 After additional discussion, Mr. Phelan made a motion to approve the exemption.

22
23 **Action:** Motion to grant the AHCA Exemption was made by Mr. Phelan. Seconded by Mr. Gerrity.

24 Vote: 4 yeas / 1 opposed (Hankerson); motion carried

25
26 Mr. Harris then asked the board if they would like to take action on Mr. Franklin's AIT application.

27
28 Mr. Phelan made a motion to approve Mr. Franklin for a 2000-hour AIT program. There was no second.

29
30 After more discussion, the board agreed that more information would be required before they could take action on the
31 application, so the application was tabled until the next meeting. Mr. Franklin waived his 90-days.

32
33 **Section VI concluded at 11:56 a.m.**

34 **Section VII started at 11:56 a.m.**

35
36 **VII. RATIFICATIONS**

37
38 **a. Licensure –**

39
40 **i. Nursing Home Administrators**

41
42 **Action:** Motion to ratify the issuance of Nursing Home Administrator licenses listed on page 399 of the agenda (Edier
43 Alejandro Leon through Lisena Mathurin) was made by Dr. Hankerson. Seconded by Mr. Gerrity.

44 Vote: 6 yeas / 0 opposed; motion carried

45
46 **ii. Nursing Home Administrators (Exam)**

47
48 **Action:** Motion to ratify individuals approved by Board Staff, Credentialing Committee, or Full Board to sit for the
49 Nursing Home Administrator Laws and rules Examination and/or the NAB examination listed on page 400 of the agenda
50 (Christopher Baver Newport through Sara Ann Busacca) made by Dr. Hankerson. Seconded by Mr. Gerrity.

51 Vote: 6 yeas / 0 opposed; motion carried

52
53 **iii. Administrators-in-Training**

54
55 **Action:** Motion to ratify the issuance of Administrator-in-Training licenses listed on page 401 of the agenda (Russell
56 Ryan Blackman through Ashley Marie Stamp) made by Mr. Gerrity. Seconded by Mr. Phelan.

57 Vote: 6 yeas / 0 opposed; motion carried

1 **iv. Preceptors**

2
3 **Action:** Motion to ratify the issuance of Preceptor licenses listed on page 402 of the agenda (Ashley Ann Peters through
4 Devin Scott Eickelmann) made by Mr. Gerrity. Seconded by Dr. Hankerson.

5 Vote: 6 yeas / 0 opposed; motion carried

6
7 **b. Continuing Education –**

8
9 **i. Providers and Courses Approved by CE Chair**

10
11 **Action:** Motion to not ratify the Que Tech, LLC courses approved by CE Chair was made by Mr. Gerrity. Seconded by
12 Dr. Hankerson.

13 Vote: 6 yeas / 0 opposed; motion carried

14
15 **Action:** Motion to ratify all other Continuing Education courses approved by CE Chair was made by Mr. Gerrity.
16 Seconded by Dr. Hankerson.

17 Vote: 6 yeas / 0 opposed; motion carried

18
19 **Section VII concluded at 12:04 p.m.**

20 **Section VIII started at 12:04 p.m.**

21
22 **VIII. PROSECUTION REPORT:**

23 Prosecution was not presented for the meeting, so Mr. Harris presented the report that was included in the board agenda
24 materials.

25
26 **Action:** Motion to allow the continued prosecution of year-old cases was made by Mr. Gerrity. Seconded by Dr. Hankerson.

27 Vote: 6 yeas / 0 opposed; motion carried

28
29 **Section VIII concluded at 12:06 p.m.**

30 **Section IX started at 12:06 a.m.**

31
32 **IX. CHAIR/VICE-CHAIR REPORT:**

33
34 **a. Future Agenda Items:**

35 Mr. Gerrity suggested that the board continue reviewing its rules.

36
37 **Section IX concluded at 12:07 p.m.**

38 **Section X started at 12:07 p.m.**

39
40 **X. EXECUTIVE DIRECTOR'S REPORT:**

41
42 **a. SWOT Analysis**

43 Dr. Spivey directed the board's attention to the presentation in their agenda materials that was originally given at the
44 September 24, 2015 Chair/Vice Chair meeting.

45
46 **Section X concluded at 12:09 p.m.**

47 **Section XI started at 12:09 p.m.**

48
49 **XI. BOARD COUNSEL'S REPORT:**

50
51 **a. Rules Status Report – November 2015:**

52
53 Mr. Harris informed the board that the Joint Administrative Procedures Committee may dispute the changes to the board's
54 continuing education rules.

55
56 **b. Discussion – OFARR Identified Rule Repeal**

57
58 **i. 64B10-10.002 Public Comment**

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- ii. **64B10-11.013 Temporary License**
- iii. **64B10-11.0061 Definitions**
- iv. **64B10-12.012 Preceptor Certification**
- v. **64B10-12.013 Administrator-in-Training Application Fee**
- vi. **64B-10-12.0021 Payment for Duplicating Licenses, Certificates and Permits**
- vii. **64B10-14.003 Time Limitation for Payment of Administrative Fine**
- viii. **64B10-15.001 Continuing Education for Licensure Renewal**
- ix. **64B10-15.002 Criteria for Approved Continuing Education**

Mr. Harris explained to the board that the Office of Fiscal Accountability and Regulatory Reform (OFARR) has identified a list of rules that they believe could be repealed. He further explained that the board would need to either vote to repeal the rules, or explain why they should not be repealed. He pointed out to the board that each rule on the list was determined to cause negligible harm to the public if repealed, but argued that repealing the rules may harm the board. Dr. Hankerson agreed. Mr. Gerrity stated that the rules should not be repealed, and the board agreed unanimously.

c. Endorsement Memo

Mr. Harris presented the memorandum that he drafted and included in the board meeting materials, and explained that if the board would like to change their stance on the NAB examination as it relates to licensure by endorsement, a rule amendment would be necessary.

Mr. Gerrity spoke in favor of considering passage of the NAB examination to be substantially equivalent to, or more stringent than the examination requirements in the State of Florida. Ms. Feeney and Dr. Hankerson agreed.

Mr. Lipman suggested specifying the requirements for the one year of management experience because he felt it had become diluted and negated the endorsement rule.

After additional discussion, a motion was made.

Action: Motion to open Rule 64B10-11.002, F.A.C. for development to propose changes in accordance with the memorandum in the agenda, in addition to deletion of the second sentence of (2)(a), was made by Mr. Gerrity. Seconded by Dr. Hankerson.

Vote: 6 yeas / 0 opposed; motion carried

Action: Motion to find that the proposed rule amendments will not have an adverse impact on small business; or be likely to increase regulatory costs to any entity, including the government, in excess of \$200,000 within one year of implementation, or \$1,000,000 within five years of implementation was made by Mr. Gerrity. Seconded by Mr. Lipman.

Vote: 6 yeas / 0 opposed; motion carried

d. 64B10-16 Draft for Discussion and Possible Amendment

Mr. Harris presented the proposed language drafted in accordance with the board's discussion at the September 17, 2015 Rules Workshop.

Carol Berkowitz, Esq., representing the Florida Health Care Association, stated that the association had not yet been able to review the proposed language, but will do so once it is published and will comment if necessary.

Action: Motion to approve the proposed language was made by Dr. Hankerson. Seconded by Mr. Gerrity.

Vote: 6 yeas / 0 opposed; motion carried

1 **Action:** Motion to find that the proposed rule amendments will not have an adverse impact on small business; or be likely to
2 increase regulatory costs to any entity, including the government, in excess of \$200,000 within one year of implementation,
3 or \$1,000,000 within five years of implementation was made by Mr. Gerrity. Seconded by Mr. Lipman.

4 Vote: 6 yeas / 0 opposed; motion carried
5

6 **e. 64B10-12 Draft for Discussion and Possible Amendment**
7

8 Mr. Harris presented the proposed language drafted in accordance with the board's discussion at the September 17, 2015
9 Rules Workshop.

10 **Action:** Motion to approve the proposed language was made by Dr. Hankerson. Seconded by Mr. Phelan.

11 Vote: 6 yeas / 0 opposed; motion carried
12

13 **Action:** Motion to find that the proposed rule amendments will not have an adverse impact on small business; or be likely to
14 increase regulatory costs to any entity, including the government, in excess of \$200,000 within one year of implementation,
15 or \$1,000,000 within five years of implementation was made by Mr. Gerrity. Seconded by Ms. Feeney.

16 Vote: 6 yeas / 0 opposed; motion carried
17

18 **f. Anti-Trust Dental North Carolina Board Presentation**
19

20 Mr. Harris provided the board with the latest updates regarding the FTC v North Carolina Board of Dental Examiners case.
21

22 **g. FTC Staff Guidance: Active Supervision**

23 This item was discussed in conjunction with f.
24

25 **Section XI concluded at 12:45 p.m.**

26 **Section XII started at 12:45 p.m.**
27

28 **XII. COMMITTEE REPORTS**
29

30 **a. AIT/Preceptor – Ms. Fernandez/Mr. Gerrity/Mr. Lipman:**
31

32 Mr. Gerrity explained that the AIT papers have been better recently, and told the board that he spoke at an FHCA conference
33 and was able to provide guidance regarding the papers. Mr. Lipman stated that any problem that he's seen has been easily
34 resolved.
35

36 **b. Budget – Mr. Helmer:** Nothing to report.
37

38 **c. Continuing Education – Ms. Feeney:** Nothing to report.
39

40 **d. Credentials – Mr. Lipman:** Mr. Lipman reiterated his support for recent rule proposals.
41

42 **e. Disciplinary Compliance – Dr. Hankerson:** Nothing to report.
43

44 **f. Healthiest Weight – Dr. Hankerson:**
45

46 Dr. Hankerson discussed strategy development document that was included in the agenda, and suggested forming
47 partnerships with associations to help get the word out about Healthiest Weight. She also suggested bringing healthy snacks
48 to in-person board meetings, and referred everyone to www.healthiestweightflorida.com and www.choosemyplate.gov.
49

50 **g. Legislation – Mr. Helmer:** Nothing to report.
51

52 **h. Probable Cause**
53

54 **i. Stats:** Nothing to report.
55

56 **i. Rules – Ms. Feeney:** Nothing to report.
57

58 **j. Unlicensed Activity – Ms. Feeney:** Nothing to report.

1
2 **Section XII concluded at 12:50 p.m.**

3 **Section XIII started at 12:50 p.m.**

4
5 **XIII. OLD BUSINESS**

6
7 **Section XIII concluded at 12:50 p.m.**

8 **Section XIV started at 12:50 p.m.**

9
10 **XIV. NEW BUSINESS**

11
12 Dr. Hankerson stated that she receives frequent questions about the board's laws and rules and questioned whether or not
13 such things were covered as part of the Laws and Rules examination and the board's continuing education requirements. Mr.
14 Lipman confirmed that they are.

15
16 **Section XIV concluded at 12:52 p.m.**

17 **Section XV started at 12:52 p.m.**

18
19 **XV. 2016 CHAIR/VICE CHAIR ELECTIONS**

20
21 **Action:** Dr. Hankerson nominated Mr. Gerrity for 2016 Chair and Mr. Lipman for 2016 Vice Chair. Seconded by Mr.
22 Phelan.

23 Vote: 6 yeas / 0 opposed; motion carried

24
25 **Section XV concluded at 12:52 p.m.**

26 **Section XVI started at 12:52 p.m.**

27
28 **XVI. NEXT MEETING DATE – March 18, 2016**

29
30 The board discussed conducting a conference call sometime in January 2016 if there are any 90-day application issues that
31 may arise before March 18, 2016.

32
33 **General Board Business concluded at 12:55 p.m.**

34 **The meeting was adjourned at 12:55 p.m.**