

Survey & Certification Unit
 800 NE Oregon Street, Suite 465
 Portland, OR 97232
 Voice: (971) 673-0540
 Fax: (971) 673-0556
 TTY: 711

<http://www.healthoregon.org/nursestaffing>
mailbox.nursestaffing@odhsoha.oregon.gov

Oregon Nurse Staffing Advisory Board (NSAB) – Ad Hoc Meeting on Civil Monetary Penalties

Friday, December 2, 2022
3:00 PM – 5:00 PM

Meeting Minutes

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| Cochairs | Uzo Izunagbara, DNP, MSN, MHA, RN (presiding) |
| Members present | Barbara Merrifield, MSN, RN; Joel Hernandez, RN; Shannon Edgar, RN, MBA; Lace Velk, RN; Mariah Hayes, MN, RN, NE-BC; Becky Wise, RN |
| Members absent | Jenni Word, RN; Chandra Ferrell, CNA; Kelsey Betts, RN; Todd Luther, RN, CEN; |
| PHD staff present | Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Austen Schmidt, RN; Tip McIntosh |
| Additional Oregon State employees present | Rep. Travis Nelson (House of Representatives), Sam Stark (Oregon Legislative Aide) |

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| Guests present | Anna Holloway (Mercy Health), Aubrey Albalos (OHSU), Barbara Hansen (Oregon Hospice) Becky Kopecky (Providence Health), Beth Dimler (Lower Umpqua Hospital), Brian Pinelle (Mercy Medical Center), Cristie Wiles (Sky Lakes), Christine Bartlett (OHSU), Crystal Smith (Samaritan Albany), Danielle Meyer (OAHHS), Diana Pisciotta (Adventist Tillamook), Elizabeth Paxton (Providence), Ethel Gonzales (ONA), Gareth Fitzpatrick (Cedar Hills Hospital), Ginger Walcutt (St. Charles), Jen Packer (Tuality), Jennifer Brown (Cedar Hills Hospital), Jesse Kennedy (ONA), Judy Geiger (Columbia Memorial Hospital), Julia Floyd (Lower Umpqua Hospital), Julie Ostrom (St. Charles), Kate Kitchell (Providence Medford), Kristen Beck (Legacy Health), Kristin Milligan (LeadingAge Oregon), Laryl Noble (KOBI) |
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NSAB Ad Hoc Meeting on Civil Monetary Penalties Minutes
December 2, 2022

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| | TV), Lora Horn (Providence Portland), Melinda Stibal (Legacy Meridian Park), Monica Tucker (St. Alphonsus Ontario), Pavlina Bevan (Providence Medford), Shauna Cline (St. Alphonsus Baker City), Susan King (staff RN), Therese Hooft (ONA), Tina Thumma (Asante), Tracie Egeland (Providence) |
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| Agenda Item 1 | <i>Call to Order</i> |
| <p>The meeting was conducted as an online Zoom meeting with computer and phone audio options. Meeting chat is reserved for NSAB members. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves.</p> <p>Board co-chair greeted board members and explained the purpose of the ad hoc meeting.</p> | |

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| Agenda Item 2 | <i>Review Meeting Agenda</i> |
| <p>K. Voelker described the contents of the ad hoc board packet and stated it is also available on the OHA Nurse Staffing website (www.healthoregon.org/nursestaffing). They briefly summarized each agenda item.</p> | |

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| Agenda Item 3 | <i>CMP Committee: Recap</i> |
| <p>K. Voelker presented the Civil Monetary Penalties (CMP) Committee Overview slides, which included the committee's background, the role of the NSAB and OHA in issuing CMPs, board responsibilities, the definition of safe patient care, the Table 1 – Civil Penalty Assessments table from rule, and the Committee's work on objective measurements of unsafe patient care as represented in nurse staffing surveys and complaint investigations, and factors that indicated a potential or actual threat to patient safety. They also summarized the CMP Decision-Making tool that was developed by the CMP Committee.</p> <p>The board did not have any questions or comments about the CMP Committee Overview slides.</p> | |

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| Agenda Item 4 | <i>NSAB Reviews Written Public Comments Received to Date</i> |
| <p>Board co-chair thanked members of the CMP Committee and the OHA nurse staffing team for their work.</p> <p>Board co-chair noted that the committee had not arrived at a consensus regarding the CMP decision making tool, with some members of the committee having concerns about implementing the CMP process and measurements of unsafe patient care. Others on the committee fully supported the tool and immediate implementation of the proposed CMP process.</p> <p>OHA received eight public statements from interested parties prior to the meeting. Board co-chair discussed themes from the comments, such as concerns about the nurse staffing law being vague and the need for an outcome-based framework. Another theme identified was</p> | |

that the CMP decision-making tool be implemented in Cycle 3. They also stated that context was another theme identified.

The board did not have any questions or comments about the written public comments OHA received.

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| Agenda Item 5 | <i>Public Comment</i> |
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Board co-chair introduced the public comment period and invited the public to comment on the proposed CMP process. Comments were limited to two minutes.

S. King stated that hospitals had 20 years to comply with the nurse staffing law, but many had ignored it and chosen not to engage in good faith efforts to improve the law. S. King supported the committee's recommendations and stated that the tags identified by the committee reflected indicators for safe and quality patient care. She agreed with the decision to weigh citations repeated noncompliance more heavily. S King supported the decision-making tool and noted that other agencies, such as the Board of Nursing (OSBN), issue CMPs and that OHA should as well. S. King thanked the board for the opportunity to comment.

No other members of the public signed up for public comment.

Board co-chair suggested that the board review the written comments as a group.

Multiple board members supported this recommendation.

Board member requested that the Board co-chair share their screen and they discuss the submitted public comments.

Board co-chair displayed public comments submitted prior to the meeting and the date of submission. Board co-chair quickly read through the themes of the submitted public comments and provided comments on themes.

There were no comments or questions on the written public comments.

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| Agenda Item 6 | <i>NSAB Discusses Written & Oral Public Comment, and Recommendations to OHA on CMP Process</i> |
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Board co-chair stated that the goal for this meeting was for the NSAB to vote on the CMP decision-making tool and vote on any additional recommendations.

Board co-chair started a round table to hear from each NSAB member present at the Ad Hoc meeting and they asked K. Voelker to call each member to comment.

K. Voelker suggested board members limit their comments to two minutes and called upon board co-chair.

Board co-chair stated that CMPs are a deterrent, not a punishment. They expressed concern that the nurse staffing law was not being enforced and that nothing would change without OHA enforcement. They stated that this would cause patient care to deteriorate.

K. Voelker called upon board member, Barb Merrifield, to comment.

Board member stated they were a member of the CMP Committee and noted that despite efforts, the committee was not able to come to a consensus on the implementation of the CMP decision-making tool. They expressed concern about the lack of research on the measurements of unsafe patient care and that there was not research demonstrating a causal relationship. Board member suggested delaying the implementation of CMPs.

K. Voelker called upon board member, Shannon Edgar, to comment.

Board member expressed concern that the tags being identified as unsafe care could be related to a documentation error instead of unsafe care. She recommended continued outreach and education before implementing the proposed CMP process.

K. Voelker called upon board member, Mariah Hayes, to comment.

Board member, M. Hayes, commented on how the pandemic affected the available resources and increased the amount of staff needed to provide adequate care. They recommended not implementing CMPs.

K. Voelker called upon board member, Joel Hernandez, to comment.

Board member, J. Hernandez, expressed concern with the lack of enforcement and stated that some hospitals continued to struggle with compliance. They stated that there were numerous nurses leaving the profession due to poor staffing and nurse burnout and noted that issuing CMPs would force hospital to closely examine what can be done to achieve the best staffing and patient care. They supported OHA implementing the proposed CMP process.

K. Voelker called upon board member, Lace Velk, to comment.

Board member, L. Velk, appreciated the thoroughness of the decision-making tool. They stated that CMPs would be a deterrent and would be extremely helpful for direct care nurses in elevating concerns about care and resources to hospitals, as well as promoting collaboration between nurses and their employers. Board member supported implementing the proposed CMP process.

K. Voelker called upon board member, Becky Wise, to comment.

Board member, B. Wise, stated that as a direct care nurse, they fully supported the implementation of CMPs because it would provide more support for nurses.

K. Voelker noted that a board member asked via chat if there was an equal members of direct care nurses and managers from NSAB in the meeting. They answered that there were four direct care nurses and three nurse managers present. They explained that although there was a rule requiring an equal number of direct care and nurse manager members of the hospital Nurse Staffing Committee to vote on any motion, the Nurse Staffing Advisory Board did not have this same requirement and equal numbers was for the board was not included in the statute, rules, or board bylaws.

Board member stated that unequal voting on the board reflected inconsistency in the law because the law stressed the importance of equal voting for hospital nurse staffing committees but not for the board.

Board co-chair concluded the round robin and asked for specific recommendations from the board on implementation of CMPs.

Board member recommended not assessing CMPs at this time and to not approve the decision-making tool at this time. They expressed concern about inconsistency in nurse staffing surveys.

A. Davis asked for examples of inconsistency in the surveys.

Board member provided an example regarding where the law requires hospitals to respond within 30 days, and the OHA may respond within 45 days.

A. Davis clarified that OHA is also required to review and respond to a Plan of Correction (POC) within 30 days. After the POC is accepted, the hospital has 45 days to implement changes from the accepted POC.

Board member stated that CMPs appeared one-sided because hospitals would be penalized if they submitted a late POC, but the penalty is not revoked nor is the OHA penalized for submitting late POC determinations.

Board member shared that during Cycle 1, when their hospital had drafted a second POC, they discovered different tags were unacceptable and they expressed concern with this.

Board member added their experience with documentation requirements, which is why they were concerned with the CMP tool.

K. Voelker acknowledged the concerns regarding the POC process. They asked for specific examples from the board of inconsistencies in what was being cited during the surveys and complaint investigations.

Board member stated that they did not have concerns with the citations but instead with the documentation requirements.

Board member explained that while surveyors were onsite, they were very engaging, but that their report reflected broad noncompliance and seemed inconsistent with the surveyor's calm behavior.

Board member suggested that the CMP decision-making tool be put into place due to some facilities disregarding the law and that OHA must begin holding hospitals accountable.

Board member echoed the need for CMPs and stated that having CMPs as a deterrent may help balance the input of direct care nurses and nurse managers.

D. Selover asked the board what additional outreach and education OHA could do for POCs.

Board member did not have an answer related to POC outreach and education, and stated that it would be helpful if OHA did not look at as large of a timeframe during surveys and investigations.

Board member answered that more clear and constructive feedback would be valuable but did not have any specific examples of this situation.

Board expressed support for CMPs, stating that it prioritized patient care and patient safety.

Board co-chair requested that the board vote on each of the recommendations made by the board.

Motion to recommend that OHA adopt the CMP decision-making tool as written: Lace Velk

Motion seconded: Joel Hernandez

Motion passed (Four ayes and three nays)

K. Voelker read the recommendation to delay implementation of the proposed CMP process until the end of Cycle 3 (2024 - 2026).

Motion to recommend that OHA delay the implementation of the proposed CMP process until Cycle 3 (2024 – 2026): Shannon Edgar

Motion seconded: Mariah Hayes

Motion not passed (Three ayes and four nays)

Motion to recommend that OHA not issue CMPs: Barb Merrifield

Motion seconded: Shannon Edgar

Motion not passed (Three ayes and four nays)

D. Selover informed the board members that OHA was consulting with DOJ on the CMP process.

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| Agenda Item 7 | <i>Summarize meeting, discuss next steps</i> |
| K. Voelker thanked board for their time to meet and stated that OHA would consider the recommendations made by the board. They stated that OHA would keep the board and members of the public up to date on any decisions OHA made related to CMPs. | |

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| Agenda Item 8 | <i>Meeting Adjourned</i> |
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Approved by the NSAB on January 25, 2023

If you need this information in an alternate format,
please call our office at (971) 673-0540 or TTY 711.