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Oregon Nurse Staffing Advisory Board (NSAB)

Wednesday, February 24, 2016

1:00 PM – 5:00 PM

Meeting Minutes

Cochairs	Carol Bradley, MSN, RN, CENP (Presiding); Susan King, MS, RN, CEN, FAAN
Members present	Carolyn Starnes, ASN, RN; Connie Pullen, BSN, RN, MHA; Debbie Robinson, RN, MSN; Jennifer Burrows, RN, BN, BSc, MBA; Rob Campbell, CP, ADN, RN; Ruwani Dissanayake, BSN, RN, PCCN; Trece Gurrad, RN, MSN; Virginia Smith, BSN, RN-BC; Zennia Ceniza, RN, MA, CCRN, ACNP-BC, NE-BC
Members not present	None
PHD staff present	Jere High, ND; Dana Selover, MD, MPH; Annabelle Henry, JD, MBA,; Mellony Bernal; Anna Davis, JD; Lisa Finkle; Stella Rausch-Scott, EMT
Guests present	Shannon O’Fallon, JD, Oregon Department of Justice

Agenda Item 1	<i>Call to Order – Dr. Dana Selover</i>
The meeting was called to order. Dana Selover introduced herself and provided an overview of the agenda. Public Health Division staff introduced themselves. NSAB members introduced themselves.	

Agenda Item 2	<i>Board Member Orientation - Dr. Dana Selover</i>
Time stamp 00:16:30	
Dana Selover reviewed key items in the board member notebook with the board including the guiding principle of NSAB, which is service to patients/citizens of Oregon. Dana Selover also explained select public meeting and public records	

laws and that meetings are recorded and minutes issued will summarize each meeting. Next, Dana Selover discussed the role of the board in the rulemaking process. NSAB is not the default rules advisory committee for nurse staffing rules in Oregon. However, the agency has decided to allow NSAB members to serve as the rules advisory committee for this set of rule revisions due to statutory time constraints. Dana Selover pointed out that the board member notebook also contains guidance on using Robert's Rules of Order. Shannon O'Fallon noted that stringent adherence to Roberts Rules is not required; however, they offer good guidance. Members signed and submitted Confidentiality Statements.

Dana Selover introduced the draft bylaws and described options for conduct of the meetings. In Article III – Membership there are non-statutory terms in sections B, C, and G that written for board consideration. Dana Selover noted that the board needs to determine how long cochairs will serve and who will preside at meetings. Draft bylaws proposed that cochairs will serve for three years and may serve two consecutive terms. Dana Selover also noted that the other decision point before the board is whether to have committees and if so, how they will function.

Susan King noted that bylaws usually need a 2/3 vote to amend. Shannon O'Fallon noted that a quorum requires seven members and that all voting requires seven members to vote in favor for ratification.

The cochairs suggested that they could alternate chairing the meetings, with Carol Bradley chairing the first meeting. Shannon O'Fallon drafted language to reflect this preference. This option resolves all issues regarding who presides at special meetings because the practice continues regardless of the type of meeting.

A member asked whether the voting provisions of the bylaws could be changed to mirror the subcommittee voting system that limits voting to equal numbers of hospital nurse manager and direct care staff representatives. Shannon O'Fallon noted that NSAB member voting rights cannot be limited in this way under the statute. Susan King asked whether this impacted the committee language, and Shannon O'Fallon noted that committees are not really voting. A member clarified that anything a committee recommends goes back to the full NSAB for approval anyway.

Carol Bradley asked whether members of a committee could be non-members of the NSAB. Dana Selover stated that this is possible on technical advisory committees, or the board can do it within the existing language. Anna Davis pointed out that any guests can be invited to address the committee, but to be members the board would need to have a technical advisory committee.

Dana Selover pointed out that if desired, future board meetings may be made available as webinars in case board members cannot attend, and meeting documents will also be available electronically. On page 2 the bylaws specify

that members can attend by phone, but members must personally participate or attend by phone; members cannot send substitutes to meetings.

In discussing reappointment, the agency offered to notify each individual board members when his or her term is going to expire so he or she can request reappointment.

Dana Selover provided examples of optional provisions regarding member reappointment and resignation that could also be added to the bylaws.

Shannon O'Fallon read aloud the draft language regarding who presides at meetings.

Dana Selover noted that the bylaws need to be adopted and then they can be amended to include the new draft language.

Trece Gurrad motioned to adopt the draft bylaws and Connie Pullen seconded the motion. The motion was approved.

Debbie Robinson motioned to amend the Article IV, Section C of the bylaws to reflect alternate chairing by the cochairs and Virginia Smith seconded the motion.

The motion was approved.

The draft rules as written do not have any language regarding resignation or reappointment.

Carol Bradley clarified that technical advisors are available to committees as written without adding provisions to make them committee members.

Virginia Smith asked who would determine whether technical advisors would address the committee. Carol Bradley stated that this would be a group decision.

Rob Campbell motioned to amend Article III of the bylaws to include the sample language regarding reappointment and resignation and Zennia Ceniza seconded the motion.

The motion was approved.

Action Item	<ul style="list-style-type: none"> • HFCL will provide members with a copy of adopted bylaws before the next meeting.
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Agenda Item 3 Time stamp 00:53:41	<i>Program Orientation - Dr. Dana Selover</i>
<p>Dana Selover guided the board through a PowerPoint presentation on nurse staffing in Oregon. This PowerPoint is available to board members and to the public upon request. First, Dana Selover reviewed the history of nurse staffing legislation in Oregon beginning with the original 2001 law, followed by changes in 2005, and then a more in-depth look at the 2015 legislation. Dana Selover noted that board member notebooks do not include a copy of Senate Bill 469</p>	

because the language has now been incorporated into statute. The considerations that the hospital nurse staffing committees must use changed significantly in 2015, as did impasse mediation. The bill also created the NSAB. Some of the overtime and work limits changed. In addition, there were changes to what information the hospitals must share and also what the agency must post and share. Dana Selover also summarized the new responsibilities of the agency and subsequent program staffing changes. Dana Selover clarified that the words audit and survey are used interchangeably; she pointed out that the surveyors must interview the hospital nurse staffing committee cochairs. Dana Selover described the implementation of the bill and the agency's ability to interpret statutes and rules in light of changing technology. Dana Selover also noted that the agency is putting on Open House events in May, August, and December of 2016. Carol Bradley asked about the agency capacity for these events. Anna Davis explained that the events will be held in a larger room and will also be done as webcasts so that stakeholders from throughout the state can attend.

Dana Selover described the structure of the Oregon Health Authority's Public Health Division, the Center for Health Protection, the Health Care Regulation and Quality Improvement (HCRQI) Section, and the Health Facility Licensing and Certification Program (HFLC). Dana Selover explained the leadership structure of the Center for Health Protection, and described the other activities of HCRQI. Carol Bradley asked for clarification of what counts as a hospital satellite. Dana Selover provided some examples of the variation of hospital satellites. Dana Selover described the types of surveys the program does including EMTALA, Immediate Jeopardy, validation surveys, and complaint investigations.

Dana Selover described the steps in the rulemaking process. The rulemaking process takes about ten weeks. Staff drafts the rule, the rulemaking advisory committee reviews the draft language and provides input. The committee also considers the Statement of Need and the Statement of Fiscal Impact. This is followed by a public hearing. Carol Bradley asked about the process for holding public hearings. Dana Selover stated that the Oregon Attorney General publishes a guidebook that summarizes the public hearing and comment process. The agency takes written testimony and can set up a phone conference as well. Susan King confirmed that the public comment period usually extends beyond the public hearing date. Susan King also confirmed that the agency acknowledges all comments it receives. Dana Selover also described the follow-up that occurs five years after new rules are passed in order to determine how the rule is working,

Jere High, the Center for Health Protection administrator came in to the meeting at this point and introduced himself. He thanked the board for doing this important work and excused himself from the meeting at the break.

Dana Selover described the hearing officer report and the process for responding to public comments. Shannon O'Fallon also provides advice on the legality of the rules during the rulemaking process.

Dana Selover pointed out the rulemaking deadlines on the NSAB calendar, and explained that the board can work through the language in March, but in April staff must turn in the draft rules. In addition, the rules can be amended in the future.

Agenda Item 4

Time stamp 01:22:18

OAR Process Overview - Dr. Dana Selover

The Oregon Revised Statutes regarding nurse staffing were amended in 2015. Several Statutes have been expanded to include new requirements and guidance, and many have been moved. Dana Selover pointed out that reading statutes is a learned skill and this is an opportunity to ask questions, but this will not be the only opportunity. Dana Selover noted that statutes are relatively difficult to change; however the agency has the ability to make minor housekeeping changes every other year if there is consensus and there is no cost to make the change. The nurse staffing rules have not been changed in several years. The board need not wait that long to make changes again to the nurse staffing rules, but the board should give the rules some time to work before making changes.

Dana Selover stated that bills come in sections, and sometimes change existing statute, but other sections are new language. Once the bill is passed it becomes part of statute and may be moved.

Dana Selover reviewed the statutes pointing out the location of various provisions. The first statute establishes the NSAB. ORS 441.154 covers hospital nurse staffing committees, this statute was amended, as was ORS 441.155, the nurse staffing plan statute, and ORS 441.156, the annual review of nurse staffing plans. Dana Selover stated that some of the statutory language will be copied into the rules, and confirmed that the board cannot change the statutory requirements. The next statute covers the audits, and that language has also changed. There is a statute that covers variances, which are generally called waivers within the agency. ORS 441.165 covers emergencies. ORS 441.166 includes some language regarding the need for replacement staff. ORS 441.169 describes the public notice requirement for complaints that went into effect in January 2016. Dana Selover stated that “shall” and “must” mean the same thing, whereas the term “may” is permissive. There is new language regarding hospital records. There are statutes regarding retaliation, which are outside the scope of this agency’s authority.

Dana Selover then pointed out the location of current administrative rules in both Division 501 and 510.

The board then looked at the draft rules. The board received two versions, one with track changes accepted, and the other showing all of the changes. The draft rules are still split between Divisions 501 and 510. The rules in Division 501 related to nurse staffing already existed, but they have been updated to reflect that statutory changes. Rules frequently have large definition sections, and the

definitions for nurse staffing are in Division 510. The draft rules replaced the language in 333-510-0045 and then created new rules to address the concepts that were previously combined in 333-510-0045. Dana Selover named the new draft rules and pointed out that the rules consist of the prior rule language and the new statutory language.

Staff left several areas for the board to provide significant input based on member expertise and experience. The draft rules also divided a single rule that contained many topics into multiple rules for ease of use.

Agenda Item 5

OAR Discussion – Carol Bradley

Time stamp 01:42:20

Dana Selover requested input from the board on the process for amending the rules to implement the 2015 statutory changes. Board and standing committees often form special committees to address technical issues in the rulemaking process. Dana Selover noted that the program needs to submit draft rules to the agency's rule coordinator on April 4, 2015, and the rules coordinator must then provide the draft to the Secretary of State. A few of the deadlines, can be moved, but others cannot.

Dana Selover confirmed that all stakeholder comments will be summarized and shared with the board in its role as the agency's RAC. All RAC subcommittee information will also be funneled through the board in its role as the agency's RAC.

Dana Selover pointed out that the March 30, 2016 RAC date could change to another day during the last week of March.

Carol Bradley suggested that the members use a consent agenda to agree on issues that do not require work and narrow the topics for NSAB attention. She would prefer to only set up committees once the board determines how much work the committees need to do.

Annabelle Henry suggested that the board discuss the rules themselves and then return to the question of process.

Susan King acknowledged that there are areas that require additional work, and other parts need less attention.

Susan King asked for confirmation that the track changes and the changes accepted versions contain the same proposed language. Dana Selover acknowledged that they do.

Dana Selover points out the changes to the audit section.

Carol Bradley asked what "unannounced" means in relation to audits. Annabelle Henry discussed the practice and how this relates to the federal surveys OHA does. Members discussed the fact that surveys are unannounced and whether this produces an efficient and accurate survey. Members agreed that

unannounced surveys are appropriate for complaint investigations. Members discussed how unannounced audits impact patient care. Susan King stated that she believes OHA gives 24-hour advance notice of a survey; Annabelle Henry explained that the program's current practices do not include advance notice of a survey. Susan King clarified that surveyors will meet with staff even after they leave the hospital. Annabelle Henry noted that audit surveys can last five days, so even if staff are not available on one specific day, they may be available on another day. Shannon O'Fallon noted that the announcement of state-only surveys in advance is discretionary. Members had a variety of views on whether and how much notice should be given for non-complaint audits. Annabelle Henry explained the federal rationale for unannounced surveys and stated that the coordination of nurse staffing audits with other types of audits and how this coordination impacts whether an audit is announced prior to initiation, which impacts the agency workload. Annabelle Henry noted that the surveyors are not required to complete the audit within five days and could leave the audit open if one of the cochairs of the hospital committee is unavailable while surveyors are on site. Susan King stated that the original intent of the audit process was not modeled on the Joint Commission process, but instead on unannounced surveys, but she also believed that some amount of notice might be helpful. Dana Selover noted that the agency will often combine a routine audit with a complaint, and that with the federal requirements for unannounced surveys this could be difficult and there could be unintended consequences. Connie Pullen suggested adding an unannounced complaint investigation in addition to an announced survey.

Carol Bradley asked for the timeframe in which the agency will issue a Statement of Deficiencies. Annabelle Henry stated that generally the Statement of Deficiencies is issued 10 days after the official exit and that the hospital then has 10 days to respond with a Plan of Correction. Carol Bradley asked for information about the intent around the response deadline, as she believed it is not possible to complete a Plan of Correction with input from the hospital's nurse staffing committee within 10 days. Shannon O'Fallon noted that hospitals can request additional time. The board discussed Plan of Correction deadlines and nurse staffing committee contributions. Annabelle Henry noted that hospitals could request a waiver of this timeline and also noted that the agency is now required to revisit the facility within 60 days after the Plan of Correction is approved. Jennifer Burrows pointed out that the involvement of the Hospital Nurse Staffing Committee in the audit process can facilitate the formulation and implementation of a Plan of Correction and that this early involvement can help the hospital meet the short timelines once the Statement of Deficiencies is issued, and she suggested that providing notice of the survey in advance could make this work better. Annabelle Henry stated that the notice to the cochairs when the survey begins and sending the Statement of Deficiencies to both cochairs are steps towards this type of collaboration and facilitating the Plan of Correction process.

The board discussed the complaint investigation process. Carol Bradley asked for clarification of the term “valid complaint” in the context of complaint investigations. Annabelle Henry confirmed that “valid” means only that if the complaint were true, the complaint issue would be one covered by Oregon nurse staffing regulations; the use of the term “valid” is not a determination that the complaint is well-founded. Dana Selover described the types of complaints OHA receive and sometimes the agency has to invest some time in determining what the complaint is and whether it is actually an issue for the agency to investigate.

Carol Bradley pointed out that there is no definition of “nursing unit” in the statute. Susan King agreed that this is something the administrative rules should address. The board informally agreed to return to the issue of definitions, as there is still work to do in this area.

Dana Selover pointed out the rule that requires hospitals to maintain specific types of documentation. Susan King noted that the list of documentation for hospitals to maintain in the proposed rules includes policies, but she suggested that it is important to have evidence that the hospital is using the policy, and that documentation should reflect how and when the policy is used. An example of this is the policy regarding limitation and diversion of patients to other hospitals. Annabelle Henry acknowledged that often this type of information goes into survey tools and administrative guidelines for surveyors to use, but that OHA’s process has not historically been transparent, but OHA is revising the survey tools and it could be useful for the board to discuss these tools and how they are used.

Carol Bradley also expressed an interest in discussing the items on the records list and what it means when items are kept electronically. Virginia Smith pointed out that policies and processes can vary by hospital, unit, and even by shift within a single hospital and some of the records listed may be hard to actually gather across hospital organizations and across the state.

Dana Selover suggested that the board could set overarching requirements, and that could be a function of having less details in our rules, but the board will then discuss what is acceptable documentation. The agency’s goal is to have hospitals able get started with their plans and surveyors will be able to go in and gather the right documentation

Dana Selover pointed out that the board cannot change statutory language, but may be able to provide clarification.

The board discussed the process for appointing a non-RN direct care staff member to the Hospital Nurse Staffing Committee in hospitals in which those staff are non-union. The statute does not clearly state the process for this appointment and different hospitals are handling it differently. The hospitals may be looking for guidance from the agency. Annabelle Henry noted that the draft rules left this point open for the board to provide guidance.

Zennia Ceniza asked for clarification on how the hospitals measure acuity, admissions, and discharges. Susan King noted that the rules should have a

definition in the definition section for acuity. Ruwani Dissanayake stated that the acuity evaluation required by statute does not include an intensity evaluation. Susan King suggested that acuity could be defined in rule to include intensity.

Dana Selover noted that the board can add definitions, but should be careful not to add definitions that lead to overly narrow interpretations.

Carol Bradley asked about the rule subsection that requires minimum numbers of RNs, LPNs, and CNAs at hospitals that do not employ LPNs. Dana Selover clarified that the minimums only apply if the hospital employs nursing staff of that type. Dana Selover thinks this question could be added to the FAQ list that the program is preparing.

Trece Gurrad asked whether the discussion of the policy on limiting admissions and diverting patients included a consideration of the cost, the risk to patients, and the likelihood that another hospital will be willing to treat that patient. Anna Davis stated that these are all considerations, but that they are the considerations for the hospital to make. The statutory language only requires that the hospital have a policy and does not list of the factors a hospital may consider.

Shannon O'Fallon noted that the draft language in 333-510-0110(2)(b) should refer to "hospital unit activity" and not "hospital unit acuity".

In discussing the annual review of Hospital Nurse Staffing Plans, Carol Bradley raised questions about the feasibility of some records required in the draft rules given current technological constraints. Specifically noted was the potential the difficulty of maintaining records if the staffing software overwrites prior versions of a schedule, rather than maintaining an original version and a new version. Members of the board discussed how these scheduling systems work in several different hospital systems. Members noted that there may be additional features to the scheduling system that are being used in some hospitals and not in others. Zennia Ceniza noted that her system tracks the variance between what you scheduled for based on your staffing request and what actually happened. It also varies if the hospital is using a plan that recalibrates based on actual patient numbers and acuity throughout the day.

Dana Selover requested input on the mediation rule drafted by staff. Carol Bradley expressed concern that the civil penalty provisions apply only to hospitals, this language is statutory, but hospitals are not the only parties involved in the impasse. Dana Selover noted that that because the OHA only licenses the hospitals, the agency does not have the authority to impose civil penalties on any other parties. Annabelle Henry stated that the rule language mirrored that statutory language in this respect and confirmed that no new civil penalty amounts have been proposed. Susan King suggested that it might be important to have documentation showing what attempts were made to resolve the impasse and would like to require an explanation from the cochairs of why they cannot agree.

Members noted that nurse staffing replacement staff and overtime rules are likely to generate a lot of discussion.

Carol Bradley discussed whether information is “posted” when it appears online. Anna Davis stated that information available online may fit the definition of posting based on whether it is available to the target audience online.

Dana Selover noted that there are always questions about which requirements can be waived. Waivers come up most frequently at Critical Access Hospitals or other hospitals in outlying areas, where there are not the same staffing agency options as in cities. Rob Campbell stated that waiver is an area of concern and requested that the board consider how long waivers should last, which requirements may be waived, and what circumstances should qualify for a waiver. Zennia Ceniza asked for clarification on the difference between a waiver and revising a nurse staffing plan. Trece Gurrad asked whether waivers are available for local emergencies, as the statute refers only to state and national emergencies.

After discussion, Carol Bradley proposed that there are three main areas for discussion:

- Replacement Staff and Overtime
- Nurse Staffing Plans and plan review
- Hospital Nurse Staffing Committees

Susan King noted that the waiver discussion fits with the staffing plan discussion.

Dana Selover suggested that mediation also fits with the plans discussion.

Connie Pullen suggested that the audits and complaints could be addressed with the Hospitals Nurse Staffing Plan Committees discussion.

Zennia Ceniza suggested that record requirements fit with the audit discussion.

Jennifer Burrows asked whether the colors in the track changes version have significance. Annabelle Henry clarified that the colors indicate which reviewer made the change, but the colors have no significance in terms of which is statutory language.

Dana Selover noted that staff will bring to the March Rules Advisory Committee meeting:

- A Statement of Need describing the reason for changing the rules
- A Statement of Fiscal Impact
- A draft of the rules for consideration by the Board

The agency will be looking for agreement on rule language, whether the language is what appears in the draft considered that day or incorporates the changes made at that meeting. Draft rule language will be provided before the Rules Advisory Committee meets.

Susan King suggested that each of the scheduled committee meeting dates could be devoted to discussion of one of the previously identified topics.

In discussing these four areas the board determined that three committees would be formed to address the topics, each committee would consist of two managers and two staff members. The proposals would be sent to the larger board, which could then consider these topics at the Rules Advisory Committee.

Connie Pullen requested a copy of the rule that indicates which language is statutory and what changes are possible. Staff agreed to create and provide that document.

The committees will be from 1:00 PM to 5:00 PM on all meeting dates. The board discussed the formation of committees and then formed three committees of four members each. Each of the committees will be staffed by the agency. Board staffing is as follows:

- Committee #1 - Replacement Staff and Overtime (Rules 333-510-0125 and 333-510-0130) is composed of Carolyn Starnes, Trece Gurrad, Rob Campbell, and Debbie Robinson. The committee will meet on Fridays, March 11th and March 18th.
- Committee #2 – Nurse Staffing Plans, Mediation, Waivers, and Review (Rules 333-510-0110, 333-510-0115, 333-510-0120, and 333-510-0135) is composed of Susan King, Jennifer Burrows, Ruwani Dissanayake, and Zennia Ceniza. This committee will meet on Wednesdays, March 9th and March 16th.
- Committee #3 – Hospital Nurse Staffing Committees, Audits, Records, and Complaints (Rules 333-501-0035, 333-501-0040, 333-510-0045, and 333-510-0105) is composed of Virginia Smith, Connie Pullen, Susan King, and Carol Bradley. This committee will meet on Mondays, March 7th and March 14th.

The board discussed whether it would be possible for two committees to meet simultaneously. Logistical concerns were raised by agency staff.

The board agreed that committees will meet in person the first time and may meet by phone the second time. Board members may also attend any other meeting by phone. Committee meetings had been proposed to last two hours; Carol Bradley requested that meetings be extended to four hours in order to get through the bulk of the discussions in person. Board members may attend or listen to meetings of committees other than their assigned committees, but assigned committee members are responsible for proposing rule language.

The board discussed options for rescheduling the Rules Advisory Committee based on the availability of the board members.

The Rules Advisory Committee was rescheduled to Monday, March 28, 2016 from 9:00 AM – 2:00 PM.

Action Item	<ul style="list-style-type: none"> • HFLC staff will prepare a version of the rules with statutory provisions highlighted for board members in advance of the committee meetings.
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Oregon NSAB Minutes
 February 24, 2016 Meeting

	<ul style="list-style-type: none"> • HFCLC staff will coordinate the changes to meeting times.
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Agenda Item Time stamp 03:55:10	<i>Public Comments</i>
<p>Tonya Tittle clarified the May quarterly board meeting date and asked whether the PowerPoint from Agenda Item 3 is available for the public. Staff confirmed the next board meeting date is on May 25th and that all materials are available upon request.</p>	

Agenda Item Time stamp 03:58:33	<i>Meeting adjourned</i>
Rules Advisory Committee Meeting	<p>March 28, 2016 9:00 AM to 2:00 PM 800 NE Oregon Street, Room 1A Portland, Oregon 97232</p>

Approved by the NSAB May 25, 2016.