



While the Watchdog Slept

THE CHRONIC CASE OF THE CALIFORNIA BRN

BY GENEVIÈVE M. CLAVREUL, RN, PHD

THE CALIFORNIA BOARD OF REGISTERED NURSING is a nine-member, state governmental agency established by the Nursing Practice Act to regulate the practice of registered nurses. It is responsible for implementation and enforcement of the laws related to nursing education, licensure, practice and discipline. And, in case you haven't been paying attention, it's been going through some interesting and perhaps momentous changes these days. It began this past

October when the *Los Angeles Times* reported a potentially serious flaw in our state's BRN licensing renewal policy. First, it didn't require nurses that were renewing their RN license to disclose any criminal convictions since their last renewal. Second, even though applicants have been required to submit fingerprints since 1990, it did not extend this policy to RNs licensed prior to that year, which built a pool of 146,000 RNs who had no fingerprints on file.



Shortly after the *L.A. Times* article exposed this glitch in the licensure process, the Department of Consumer Affairs, which has jurisdiction over the BRN, implemented emergency procedures requiring RNs to disclose any criminal convictions during the renewal process, and that, beginning March 1, 2009, nurses who were licensed prior to 1990 would need to submit fingerprints.

Requiring RNs to submit their fingerprints to the BRN may seem redundant since nurses are often fingerprinted and subjected to a background check by prospective employers, however, as the article reported, several license searches on the BRN database failed to reveal problems such as:

— A nurse who had pleaded guilty to charges of Medicare fraud. Her record showed neither the conviction nor restriction on her license, even though she is currently serving a five-year sentence;

— An Orange County RN who continued to renew his license while serving time for attempted murder; and

— Another nurse who was convicted 14 times from the period of 1996 through 2006 for driving under the influence and eventually driving with a suspended license and drug possession.

The flaw in the system goes deeper than assuming hospitals and healthcare providers would report problems such as this to the BRN after a fingerprint or background check. Because even if the issue was reported, the BRN seemed to take an inordinate amount of time to act on the information. In the case of the Orange County RN, who is serving life plus a three-year term, he was able to renew his license several times before the BRN revoked it eight years later. Granted the above examples may appear extreme and one could argue the exception rather than the rule, however they did bring to light a severe safety issue that affects both RNs and our patients.

THE CASE FOR A CALL TO ACTION

The October 2008 *L.A. Times* article was but the first salvo in a series of articles that eventually led to the firing of three of the six sitting members of the Board of Registered Nursing (three seats had been left vacant for quite some time); the resignation of one of the remaining members; and the resignation of the executive director. Gov. Schwarzenegger then appointed six new members, none of whom required approval of the legislature, leaving one position on the nine-member board vacant (it was subsequently filled prior to the first meeting of the new board this past July).

The most stunning revelation about our state's BRN came in the July 12, 2009 *L.A. Times* article — done in partnership with ProPublica, a nonprofit investigative group — entitled "Problem nurses stay on the job as patients suffer." It detailed nine different RNs and how their cases were handled — or not. For all nine, it was documented in dramatic fashion the failure of the BRN to properly exercise its enforcement responsibilities, leaving RNs who had exhibited dangerous or criminal behavior with active licenses. The publicly accessible license verification system did not indicate that these nurses were under investigation or had been reported for serious offenses.

CHRONIC INCAPABILITY

The problems enumerated in the *L.A. Times* series did not occur overnight, however; they are symptomatic of chronic

neglect. If we go back nearly 10 years, Daryl Walker, acting chief of the Consumer Affairs' investigation division, testified that nearly 20 percent of field investigator positions have been cut since 2000, leaving some investigators with up to 100 cases. I had the opportunity to speak with several of the previous board members and learned that they had made numerous requests to increase the number of enforcement officers and found these requests rebuffed.

As I perused the well over 400 comments posted on the *L.A. Times* comment board associated with this series it became apparent that many nurses and lay people were under the impression that the nine members of the BRN board are highly compensated for their time; but the reality is they are not. Unlike some State of California commissions and boards — such as the soon-to-be-disbanded Integrated Waste Management Board, whose commissioners were often compensated with a salary of \$150,000 a year — the BRN board members are in essence volunteers with real world jobs who get \$100 (and some travel expenses reimbursed) for every eight hours they spend on board duties, and then only if they complete the requisite paperwork.

As I learned these facts I thought perhaps the BRN should have members that are full time and well compensated, especially when you consider the enormity of their responsibility. Having such a board might have avoided many of the problems that we are faced with today.

Another issue of chronic neglect is commitment. Ruth



Ruth Ann Terry, RN, former executive director of the California Board of Registered Nursing (Photo courtesy of ProPublica)

Ann Terry, RN, who was the executive director of the BRN and the primary contact for the nine-member board, had held that position for nearly 16 years and had been an employee of the BRN for a total of 25 years. Under her leadership the board turned over several times, and though Susanne Phillips, RN, had been the president of the BRN, she had served in this role for a mere two months after the prior president, Francine LaTate, retired having served for nearly eight years.

I found the oversight of LaTate's long-time leadership interesting, especially since several of the cases mentioned in the article occurred during her tenure. The current interim executive director, Louise Bailey, RN, M.Ed., has been with the BRN for 15 years and a high-profile member at most of the meetings. This might be good in the sense of continuity, but it begs the question, how committed are the DCA and the BRN to making strategic and possibly wholesale changes at our embattled department?

Resistance and perseverance take effort and commitment. This is not to say that previous and current board members lack these skills, but it can be all too easy to resign oneself and pursue the path of least resistance. I think that the new board may

be faced with some of these same challenges and can only hope that they are more successful in having their requests honored, or I fear it may return to old habits.

A NEW BEGINNING?

Both the public and the nursing community have been vociferous about the poor oversight exhibited by the BRN board members, but at the July 31 meeting of the new BRN at the DCA offices in Sacramento I was hard-pressed to find anyone condemning the current or previous board for the systematic failings outlined in the articles. Numerous representatives from various nursing associations and unions seemed to take a more reserved position, choosing to acknowledge the failures in passing but stressing that they stood ready to assist the BRN on its "new" mission.

I left the day's proceedings underwhelmed after seeing the board take several missteps that I suspect will lead to the same mistakes made by previous boards. One was the failure of the board to allow public comment regarding their posted closed-session item, which was to discuss the appointment of an interim executive director. The Brown Act permits public comment on all agenda items, including closed-session ones, prior to the time they're discussed, and one would think the BRN would have welcomed input from the very nurses it's charged with the overseeing. Instead they refused to allow public comment, as is also permitted by law.

Once the board returned to open session they introduced, Louise Bailey, RN, M.Ed., as their choice for interim executive director, which was hardly a surprise. As an observer of governmental bodies and their related commissions and boards, I suspected well in advance that she would be their choice. Meanwhile, on Aug. 3, the BRN released its intent to fill the position permanently.

THE PATH TO COME

The job ahead for the board and its executive director is not for the meek. I listened to witnesses testify about the investigative process and heard case depositions go through a highly redundant system that requires numerous stops on the way to the board (I lost count after six different steps and hand-offs between the BRN, DCA and the State Attorney offices). In some cases they described a scenario where the BRN would hand the case off to the next stage, and then it would be returned to them before it could go on to the next stage, and so forth. The lack sufficient investigators and other adjunct staff who are focused specifically on the BRN further complicated this process.

Without a doubt the BRN needs to be able to have its own body of dedicated investigators, preferably former RNs. When you consider that our licensure fees generate nearly 20 million dollars and that the BRN is considered a special fund program, there should be little reason for budgetary shortfalls to have a severe effect on the BRN's ability to do its business. However, the governor has not exempted employees of special funds from the state-mandated furloughs, despite pressure for him to do so. One would hope that he might at least exempt the BRN from this mandate so they can go about the much-needed business of "fixing" the identified weaknesses that have been plaguing the BRN, especially in this time of urgency.

NURSES, PLEASE ATTEND A MEETING

So what's next? Do we pillory the former members? Hardly! I have been a frequent observer of our board at almost every meeting over the past five years, and I have found them committed to doing their utmost. I think the reported failings had more to do with the entrenched civil service staff that welded most of the real power and a board that met too infrequently considering the magnitude of their charge. As they were confronted with a growing number of discipline cases,



Susanne Philips, president of the California BRN, during a board meeting (Photo courtesy of ProPublica)


I think it became easier to focus on what they could control: education- and legislative-related issues. Hopefully, with a spotlight on the new board, we'll find everyone recommitting to reinvigorating the BRN and its mission.

I think that we nurses can play a role in this by simply making an effort to attend whichever BRN meet-

ing is in our neck of the woods. In the many, many years I've been attending them, I've rarely encountered other RNs that were there simply to observe or comment on an agenda item. Of course representatives (some RNs, some not) from various nursing associations, unions and schools attend religiously; but I think our board would benefit from seeing that they are being watched by the very RNs they oversee.

The BRN posts their meetings well in advance, provides an agenda and most of the relevant support material online. These meetings are generally rotated around the state. The next meeting will be in Sacramento on Sept. 22 and 23 at the Department of Consumer Affairs, 1625 N. Market Blvd. in Hearing Room #S102.

Sacramento might not be everybody's cup of tea, but if you find yourself in town or you live within driving distance you might want to consider attending this meeting. I assure you the experience is rarely boring and almost always educational and informative. Remember, even the watchdog needs watching sometimes.

To read the *L.A. Times* coverage of the BRN, visit the link at the end of this article on WorkingNurse.com. Or go to <http://www.latimes.com/news/local/photography/la-me-nurse-story-gallery,0,4845617.storygallery>. 



Genevieve M. Clavreuil RN, Ph.D., is a healthcare management consultant who has experience as a director of nursing and as a lecturer of hospital and nursing management. She can be reached at: Solutions Outside the Box; PO Box 867, Pasadena, CA, 91102-2867; (626) 844-7812; gmc@solutionsoutsidethebox.net.



WE CARE WHAT YOU THINK

Please visit WorkingNurse.com to give us your feedback.

