# 600px-Seal_of_Louisiana_2010.png STATE OF LOUISIANA BOARD OF EXAMINERS OF

**NURSING FACILITY ADMINISTRATORS**

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## MINUTES

**JUNE 15, 2022 SPECIAL BOARD MEETING**

Chair Jamie H. Shelton called a special meeting of the Louisiana Board of Examiners of Nursing Facility Administrators (“LABENFA” and / or “Board”), which was conducted in-person at the Board’s office on June 15, 2022 in accordance with applicable law, relating to the Board’s ongoing FY2020-2021 legislative audit.

**Board Members Present:**

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| --- | --- | --- |
| Mr. Jamie Shelton, Chair | Mr. Scott Crabtree | Mr. Teddy R. Price |
| Mr. Jack Sanders, Vice Chair | Dr. Susan Nelson | Mr. Kemp Wright |
| Mr. Cullen Brewer | Mr. Andrew Perilloux |  |

**Board Members Absent:**

|  |  |  |
| --- | --- | --- |
| Dr. Charlotte S. Hurst | Mrs. Patricia LaBrosse | Mr. Bill Ledbetter |
| Mr. Delbert Wilbanks |  |  |

**Others Present:**

Mr. Mark Hebert, Executive Director

Ms. Kristie Mascarella, Assistant Executive Director

Mr. Thomas E. Deviller, General Counsel

I. CALL TO ORDER

The meeting was called to order at or about 12:05 p.m. by Chair Jamie Shelton, who conducted a roll call. See, attendance detailed above.

II. DISPOSITION OF AGENDA

Chair Shelton presented the agenda for review and approval. Mr. Crabtree made a motion to adopt the agenda, which was seconded by Dr. Nelson, and unanimously approved.

III. EXECUTIVE DIRECTOR REPORT

Mr. Hebert presented the Executive Director Report as true to the best of his knowledge at the time, providing personal testimony, documents, and information reasonably substantiating or indicating all of the following:

 During or about October 2021, Ms. Mascarella delivered Board financial documents and information to contracted auditor, Mr. William Mercer, regarding the Louisiana Legislative Auditor’s (LLA) Fiscal Year 2020-2021 (FY 2020-2021) annual audit.

 During or about March 2022, Mr. Mercer emailed LABENFA staff to schedule a site-visit

/ audit inspection to occur at the Board office. Further, according to Mr. Hebert, he received communication from LLA staff – during Mr. Mercer’s site-visit – indicating Mr. Mercer’s contract to audit LABENFA had been recently terminated or expired but that Mr. Mercer had been authorized to complete the Board’s current, FY 2020-2021 audit report.

 On or about Wednesday, April 20, 2022, Mr. Mercer emailed Mr. Hebert, including an attached, preliminary draft of his Independent Accountant’s Report (“Preliminary Mercer Report”).

 On Wednesday, April 27, 2022, Mr. Hebert emailed Mr. Mercer, including an attached “Answers to Draft Report,” responding to the Preliminary Mercer Report (“Answer”). The April 27, 2022 Answer was signed by Chair Shelton and Mr. Hebert.

 On the same date, April 27, 2022, Mr. Mercer issued his final report, ostensibly including the Board’s Answer and any other revisions that may or may not have been made by Mr. Mercer (“Final Mercer Report”).

 On Monday, May 2, 2022, the Board conducted its regularly-scheduling Board meeting without any knowledge or information of the Final Mercer Report. During the meeting, the Board was provided information regarding the April 20, 2022 Preliminary Mercer Report and the April 27, 2022 Answer but not including the April 27, 2022 Final Mercer Report. According to Mr. Hebert, LABENFA staff did not receive notice or copies of the Final Mercer Report until Wednesday, May 18, 2022, via U.S. Mail.

 On Friday, May 27, 2022, Chair Shelton required Mr. Hebert to sign a “Plan of Correction,” resulting from the initial findings included in the Preliminary Mercer Report and Chair Shelton’s personal review of relevant office protocols (“Plan of Correction”).

 On Wednesday, June 1, 2022, LLA staff appeared at the Board office to conduct a site- visit / audit inspection without prior notice to LABENFA staff, membership, or legal counsel. In response, Chair Shelton traveled to the Board office and discussed related matters, to the extent allowed, with LLA staff. Additionally, Mr. Hebert emailed Mr. Devillier, serving as the Board’s first actual notice and copy of the Final Mercer Report.

 Mr. Wright and Mr. Crabtree both requested more information from Mr. Hebert, questioning for more explicit details about both those specific transactions identified in the Final Mercer Report as having a “questionable public purpose” and also any other transactions that may appear to have a “questionable public purpose,” regardless of whether yet discovered by LLA staff.

 Generally, Mr. Hebert expressed that he took responsibility and could have done a better job vetting and / or reducing Board expenses during FY 2020-2021 but that the COVID-19 pandemic, governor proclamations and emergency orders, the expectations and standards of a newly-installed Board Chairman, and other issues resulting from telework, personnel turnover, and supply chain challenges had affected decision-making and office procedures.

 More specifically, Mr. Hebert noted an expense, relating to a “Ninja Grill Smart Probe,” that had accidentally been purchased by a former Board employee, who quickly reimbursed the Board in full upon discovery.

 Mr. Crabtree also questioned Mr. Hebert regarding whether and / or when LLA audit staff had informed LABENFA staff about the duration or scope of the ongoing audit and investigation. Mr. Hebert replied generally, “They are looking at everything,” and explained that he expected the audit to be a “long process” but admittedly did not know or estimate the unknown timeline.

 According to Mr. Hebert, at a minimum, all Board financial records from January 1, 2019

– present are currently being reviewed by LLA staff as a result of the April 27, 2022 Final Mercer Report. Mr. Hebert additionally noted other expenditures that were already known to LLA staff, including but not limited to certain purchases of off-site telecommunications services and devices, building supplies and equipment housed off-site, and a rental storage unit.

 Prior to finishing the Executive Director Report, Mr. Shelton asked Mr. Hebert whether he had any additional statements or information to provide the Board at that time. Mr. Hebert declined then left the meeting and the hearing room prior to the formally-noticed Executive Session.

IV. UNFINISHED BUSINESS

The Board did not review or discuss any unfinished business. Mr. Shelton asked for any public comments or questions prior to requesting a motion to enter Executive Session. The Board did not receive any public comment(s) or question(s).

V. EXECUTIVE SESSION

Mr. Wright made a motion to enter Executive Session to discuss the ongoing LLA audit, Final Mercer Report, and related investigative matters, in accordance with La. R.S. 42:1 et seq, specifically including but not limited to La. R.S. 42:16-17, which motion was seconded by Chair Shelton, and unanimously approved. All present members and the Board’s legal counsel participated in the Executive Session; however, LABENFA staff was neither requested nor allowed to participate in the Executive Session. After extensive discussion, Chair Shelton requested that the Board call the open meeting back to order. Mr. Price made a motion to formally resume the open meeting, which motion was seconded by Mr. Wright, and unanimously approved by all present members.

VI. NEW BUSINESS

Following the call back to order, Mr. Wright made a motion, which was seconded by Mr. Brewer, and unanimously approved by the Board to order all of the following new business after duly allowing for a public commentary / question period:

1. That the Board formally adopt and add to its Policy and Procedure Manual (“Manual”) all best practices relating to data sanitization procedures, as required and approved by the Louisiana Property Assistance Agency (LPAA), Office of Technology Services (OTS), and the Division of Administration (DOA) on May 25, 2022. See the Manual, Section 4.10; Ms. Wanda M. Bush, Program Compliance Officer, Louisiana Property Assistance Agency (LPAA), Division of Administration; Ph: 225-342-6858; wanda.bush@la.gov.

2. That the Board retroactively adopt and enact the May 27, 2022 Plan of Correction, effective as of that date, and add its fiscal controls to the Manual in the manner and form authorized and enacted by the Board during its special meeting, for the purpose of immediately recognizing and implementing temporary, emergency fiscal controls to protect the public interest in the Board’s funds and financial stability (“Emergency Controls”).

3. That the Board declare that the Emergency Controls shall be subject, in their entirety, to future Board action but also be subject to reasonable revision and modified implementation as authorized by the Board Chair, Vice Chair, and / or the designee of the Chair or Vice Chair. Further, that the Board declare the Emergency Controls shall expire on either Wednesday, November 30, 2022 at 5:00 p.m. or until such other date and / or time ordered by the Board, whichever occurs earlier.

4. That, notwithstanding Paragraphs (2) and (3) herein, the Emergency Controls may be extended, in writing, by either (a) the Board Chair or (b) the Vice-Chair in the absence of or at the request of the Board Chair, without additional, formal Board action. The Emergency Controls may be extended by the Chair or Vice-Chair only in the form authorized by the Board during its June 15, 2022 special meeting, and the Emergency Controls shall neither be extended nor remain effective on or after Friday, March 31, 2023 at Noon (12:00 p.m.), without additional, formal Board action in open meeting.

A. POLICY AND PROCEDURE MANUAL REVISIONS; EMERGENCY FISCAL CONTROLS

More specifically, the Board adopted and enacted the following changes to the Board’s Policy and Procedure Manual:

“SECTION IV

FINANCIAL AND SECURITY MANAGEMENT

4.1 Policy; procedures.

\* \* \*

Note: On June 15, 2022, resulting from the Board’s June 1, 2022 discovery of an undisclosed, final audit report, the Board promptly called, publicly-notified, and conducted an open special meeting at its Baton Rouge office (“Special Meeting”). During the Special Meeting, the Board ratified changes to Section IV of the Manual for two primary purposes:

1) Final, permanent adoption of best practices relating to data sanitization procedures as recommended and / or required by the Louisiana Property Assistance Agency (LPAA), Office of Technology Services (OTS), and the Division of Administration (DOA). See Section 4.10, as approved by LPAA on May 25, 2022.

2) Immediate adoption of temporary, emergency fiscal controls applicable to all Board staff, pending final completion of the ongoing, LLA audit (“Emergency Controls”). Notwithstanding any other provision, the Emergency Controls shall be implemented, enforced, and expire in accordance with the terms of Section 4.11 of this Manual.

\* \* \*

4.4 Expenditures. All checks disbursed by the Board shall have two authorized signatures. Authorization for co-signing Board checks is granted by the Board Chairman.

\* \* \*

e. Travel. Travel expenses are reimbursed in accordance with the Louisiana Travel Guide issued by DOA. Board members are paid actual expenses as provided by law. All Board member travel, including but not limited to rental car usage, shall be is authorized only by the Chairman, or Vice Chairman, or by affirmative Board action while staff or consultant travel may be authorized by the Executive Director but only in accordance with applicable law. the DOA Travel Guide, as periodically amended. Reimbursement funds are determined in accordance with and subject to the requirements imposed by the DOA Travel Guide applicable law. Payment of expenses and per diem is made by the State travel voucher provided by DOA.

\* \* \*

4.11 Emergency Controls; effectiveness. The purpose of this Section 4.11 is to formally adopt and codify the fiscal controls included in the May 27, 2022 Plan of Correction, as revised and enacted by the Board. Therefore, in accordance with the May 27, 2022 Plan of Correction, the June 15, 2022 Special Meeting, resulting Board Order, and Sections 4.1(a) and (b) of this Manual, the following Emergency Controls shall be effective until and expire on either Wednesday, November 30, 2022 at 5:00 p.m. or until such other date and / or time ordered by the Board, whichever occurs earlier:

a. LABENFA staff shall receive specific, prior written authorization from the Chair, Vice Chair, or the Board prior to any expense of Board funds exceeding five hundred dollars ($500.00).

b. All Accounts Receivable, monthly bank statements, and reconciliation review(s) or other necessary authorization(s) shall be reasonably and timely completed by the Chair, Vice Chair, and / or the designee of the Chair or Vice Chair.

c. The Executive Director shall do all of the following:

i. Process all Accounts Receivable.

ii. To the extent practical and reasonable, immediately reduce and / or terminate discretionary Board expenses relating to food, drink, travel, educational seminar(s), and other meeting(s) that may be necessary to conduct Board business.

iii. Ensure that all Board expenditures are appropriate and necessary, specifically including but not limited to all Board credit card expenses.

iv. Provide monthly reporting to the Chair, Vice Chair, or the express designee of the Chair or Vice Chair, prior to the 20th day of each month, accounting for and providing copies of all available credit card statements, bank statements, and all other documents or information requested by the Board.

v. Ensure that delivery of any good(s) or service(s) purchased using Board funds are delivered to the Board office, including but not limited to telecommunications equipment and services (e.g. internet, television, cable, phone, devices, etc.), unless otherwise expressly authorized in writing by the Chair, Vice Chair, or the Board.

d. The Assistant Executive Director shall process all Accounts Payable and be responsible for providing written notice to the Executive Director, Chair, Vice Chair, and / or the designee of the Chair or Vice Chair for any necessary final authorization(s).

e. Payments by Check. Prior to any expense being paid for by Board check, LABENFA staff shall provide written notice to the Chair, Vice Chair, and / or the designee of the Chair or Vice Chair to request signature authorization of the expense. Such written notice shall include the amount of the expense and all relevant documentation and information necessary to reasonably determine appropriate action.

f. Telecommunications. No telecommunication equipment and / or service(s) shall be paid for or purchased using Board funds without first obtaining written authorization of the Chair, Vice Chair, or the express designee of the Chair or Vice Chair prior to such payment(s) or purchase(s).

g. Payments related to Accrued Leave. LABENFA staff shall strictly ensure that all payment(s) relating to accrued leave are processed through the Board’s formally authorized payment processing provider of record (e.g. Paychex) to ensure compliance with withholding requirements.

Notwithstanding any other provision of this Manual to the contrary, Section 4.11 shall supersede any other provision of this Manual for the duration of its effectiveness in the event of conflicting provisions.

B. POLICY AND PROCEDURE MANUAL REVISIONS; LOUISIANA PROPERTY ASSISTANCE AGENCY (LPAA)

The Board adopted and enacted the following changes to the Board’s Policy and Procedure Manual:

“4.10 Data sanitization; purpose; standards; requirements. LABENFA intends to comply with all best practices recommended or required by the Louisiana Property Assistance Agency (LPAA), the Office of Technology Services (OTS), or any other applicable oversight entity relating to the standards and requirements applicable to data sanitization.

a. Purpose. Data sanitization is the process of permanently removing or destroying data stored on a device or electronic media, leaving no residual data even when data recovery is attempted with advanced forensic tools.

b. Methods. The only acceptable methods of sanitization are clearing, purging, and destruction.

i. Clearing: Overwriting with a single or multiple pass(es), factory reset, and

/ or removing power. Overwriting procedures shall be documented, validated, and approved prior to LABENFA use on production equipment.

ii. Purging: Degaussing and used only on approved and serviced equipment.

iii. Destruction: Shredding of printed materials only; pulverization, melting, incineration, or disintegration only by use of an approved process or contracted partner. LABENFA shall contact OTS with any questions and for applicable clearance of any third-party, data sanitization vendor.

c. Log requirements; recordkeeping. LABENFA shall use the LPAA sanitization certificate form or OTS sanitization log depending on whether the equipment at issue is being sent to LPAA for surplus or disposal (See LPAA, POL 201401). Log records shall be created and maintained manually or by system for each time that a data sanitization event is attempted. The log record shall be created regardless of the success or failure of the sanitization and contain at least the following:

i. Media or device type.

ii. Status code showing approval of the sanitization process.

iii. Include any unique identifiers, including but not limited to device or property serial numbers.

iv. Date, time, and controlled work area location of attempted sanitization.

v. Full name of individual who performed the attempted sanitization.

d. Retention; inventory. LABENFA shall not sanitize any data or public records in any manner which violates the agency’s data retention schedules or directives. Further, prior to any bulk sanitization, LABENFA shall conduct an initial inventory to ensure all devices or media are accounted for throughout the sanitization process.

e. Related standards and procedures. In any event LABENFA shall consult with the office of OTS Information Security (security@la.gov) with any questions regarding IT POL 1-26 Data classification; IT POL 1-04 Data sanitization; IT SOP 1-01 Drive Overwrite (Single Pass); IT SOP 1-02 Drive Overwrite (Triple Pass); and, LPAA POL 201401.”

C. MEETING EXPENSES

Dr. Nelson made a motion to authorize payment for all lawful meeting expenses, which was seconded by Mr. Crabtree, and unanimously approved.

VII. ADJOURNMENT

Mr. Perrilloux made a motion to adjourn, which was seconded by Mr. Crabtree, and unanimously approved at or about 2:15 p.m.