

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

February 16, 2017

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Dr. Allison-Bryan called the meeting of the Board to order at 8:40 AM.

ROLL CALL: Mr. Heaberlin called the roll. A quorum was established.

MEMBERS PRESENT: Barbara Allison-Bryan, MD, President
Kevin O'Connor, MD, Vice-President
Ray Tuck, DC, Secretary-Treasurer
Syed Ali, MD
David Archer, MD
Randy Clements, DPM
Lori Conklin, MD
Alvin Edwards, PhD
Deborah DeMoss Fonseca
David Giammittorio, MD
The Honorable Jasmine Gore
Jane Hickey, JD
Maxine Lee, MD
Wayne Reynolds, DO
David Taminger, MD
Svinder Toor, MD
Kenneth Walker, MD

MEMBERS ABSENT: Isaac Koziol, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Alan Heaberlin, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Sherry Gibson, Administrative Assistant
David Brown, DC, DHP Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Scott Johnson, JD, MSV
Lauren Bates-Rowe, MSV
Claudette Dalton, MD, FSMB
Lisa Robin, Vice-President, FSMB
Steven Heretick, JD, FSMB
Shiri Hickman, JD, FSMB

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Thomas Reach, MD, Watauga Recovery Center
Mercer May, AATOD
Ed Ohlinger, AATOD
David Cassise, AATOD
Nick Reuter, Indivior
Cheri Lindberg, MD, Indivior
Hannah Newman, VCU
Timothy Bunton, MD, Virginia Addiction Treatment Access Coalition
Carey Cox, VATAAC
Joel Andrus, US Oncology
Hughes Melton, MD, Virginia Department of Health
Sara Heisler, VHHA
Brad Bachman, American Society of Addiction Medicine
Debra O'Beirne, MD, Fairfax County CSB and VaSAM
Peter Breslin, MD, VA Addiction Treatment Access Coalition
Julie Galloway, MSV
Cal Whitehead, Commonwealth Strategy Group
Dave Garland

EMERGENCY EGRESS PROCEDURES

Dr. O'Connor provided the emergency egress procedures for Conference Room 2.

APPROVAL OF THE OCTOBER 20, 2016 MINUTES

Dr. Tuck moved to accept the minutes of October 20, 2016 as written. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

Dr. Reynolds moved to accept the agenda as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEM

Scott Johnson, MSV
Mercer May
Nick Reuter
Timothy Bunton, MD
Hughes Melton, MD
Debra O'Beirne, MD
Peter Breslin, MD
Dave Garland

DHP DIRECTOR'S REPORT

Dr. Brown took the opportunity to thank all who had contributed to the development of the opioid regulations that the Board would be discussing later in the meeting. He had high praise for Dr. Allison-Bryan and Dr. O'Connor whose leadership has been key to this effort.

FSMB PRESENTATION

Steve Heretick, JD of the Federation of State Medical Boards (FSMB) introduced the FSMB colleagues accompanying him, Claudette Dalton, MD, Lisa Robin, VP and Shiri Hickman, JD. Mr. Heretick provided an overview of the history of the FSMB. The FSMB is a 503(c)(6) corporation now over 100 years old. It is located in Euless, TX and also has an office for advocacy in Washington, DC. The FSMB is made up of over 70 member boards. It is striving to become a voice in international medicine as it continues to be an advocate and educator for state medical boards.

Lisa Robin also contributed to the presentation. She has been at the Federation for 25 years. FSMB continues to grow and offer more services to state medical boards, physicians, and the public. It has continued to enhance its comprehensive and unique physician database. This database is created from numerous sources including individual state boards, the National Commission on Certification of Physician Assistants, medical specialty boards, the National Board of Medical Examiners, NPI data and the Social Security death master file. This information is used in support of disciplinary alerts and verifications. Key elements of this data include individual board disciplinary information, USMLE scores and attempts, American Board of Medical Specialties and American Osteopathic Association board certifications.

Ms. Robin reviewed the 2016 Medical Regulatory Trends and Actions. This included an overview of DOCINFO, a service launched in August that provides the public with the ability to search for a doctor's public disciplinary action.

She invited all to attend the FSMB Annual Meeting April 20-22, 2017 in Fort Worth. The FSMB is now recognized as an accredited CME provider.

She provided a Policy and Advocacy Update, noting new opioid guidelines, new white papers regarding "Duty to Report" and "Compounding of Drugs by Physicians", and several workgroups including "Telemedicine Consultation" and "Marijuana & Medical Regulation."

Ms. Robin reviewed the key principles of the Interstate Medical Licensure Compact. The Compact has been adopted in 18 states, and 6 other states have introduced legislation. The Compact is a voluntary program for physicians and state boards. The Compact will begin processing licenses in the next week or two.

Dr. O'Connor asked Ms. Robin if she could explain the difference between "licensure by compact" and "licensure by endorsement." Ms. Robin noted that licensure by compact is very similar to licensure by endorsement. There are certain qualifiers that must be verified by a physician's home state. Once these qualifiers have been verified, the home state will send a "letter of qualification" to the board of the state in which the applicant is seeking licensure.

It should be noted that Mr. Heretick was very complimentary of the Virginia Board of Medicine and the work it has done over the years.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Allison-Bryan reported on her attendance at the Council of State Governments on Interstate Compacts meeting in December 2016. She noted that this meeting was about interstate compacts in general. She then explained that the intent of the Interstate Medical Licensure Compact is to enhance license portability, provide greater access to care for patients, and support the practice of telemedicine. She said the Board's Legislative Committee thoroughly reviewed the Interstate Medical Licensure Compact in 2016. She further noted that the Board has the authority to promulgate regulations to expedite the licensing process and has proposed regulations for licensure by endorsement. She stated that compacts are a contract and supersede state laws. She ended by saying that one issue the Virginia Board has with the Interstate Medical Licensure Compact is that it requires all complaints to be reported to the Commission. This requirement conflicts with current Virginia statute regarding the confidentiality of complaint information.

VICE-PRESIDENT'S REPORT

Dr. O'Connor thanked Dr. Walker and his workgroup for their efforts in completing the proposed guidance document on the use of buprenorphine for office-based treatment of opioid addiction.

SECRETARY-TREASURER'S REPORT

Dr. Tuck did not have a report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp gave an updated financial report covering the first two quarters of FY2017, as well as the Board's cash position. The Board had an \$11,685,000 on December 31, 2016.

Dr. Harp said the Board is in good shape in regards to its FY2017 budget and expenditures. So far this year the Board's direct expenditures have been \$1.5 million dollars. The largest allocated expenditures have been the Enforcement Division, DATA, the Administrative Proceedings Division and Finance.

This report was for informational purposes only and did not require any action.

- Patient Care Disciplinary Case Processing Times

Dr. Harp covered the performance reports for DHP and the Board of Medicine. In the second quarter

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of FY2017, the Board's case clearance rate was 95%. Cases older than 250 days were down to 14%. Due to the great efforts of the Board members and Dr. Matusiak, the percentage of cases closed in less than 250 days was 95%. The median time for closure of patient care cases during the second quarter was 6 days.

- Health Practitioners Monitoring Program (HPMP) The Monitoring Program Committee took the following actions January 27, 2017 on Board of Medicine licensees and applicants: one respiratory therapist stay vacated, one physician dismissed/deemed ineligible, and one occupational therapy assistant dismissed due to resignation. Three physicians and one athletic trainer successfully completed the program. The Board of Medicine currently has 107 licensees/applicants in HPMP, which is approximately 25% of the total HPMP participants.

This report was for informational purposes only and did not require any action.

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

Dr. Reynolds moved to accept the minutes en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Barrett provided an update on the status of several Board appeals.

Board of Health Professions

Dr. Allison-Bryan had no report as BHP's last meeting in December was cancelled.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck had no report.

Committee of the Joint Boards of Nursing and Medicine

The December 7, 2016 minutes were included in the packet.

NEW BUSINESS

1. REGULATORY AND LEGISLATIVE ISSUES

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- Chart of Regulatory Actions

Ms. Yeatts reviewed the chart on the status of regulations for the Board as of February 15, 2017.

This report was for informational purposes only and did not require any action by the Board.

- Report of 2017 General Assembly

Ms. Yeatts reviewed the following bills currently pending in the Virginia General Assembly:

- HB 1484 Occupational therapists: Board of Medicine shall amend regulations governing licensure;
- HB 2164 Drugs of concern; drug of concern;
- SB 880 Genetic counselors; licensing; grandfather clause;
- SB 1009 Telemedicine, practice of; prescribing controlled substances;
- SB 1027 Cannabidiol oil and THC-A oil; permitting of pharmaceutical processors to manufacture and provide;
- SB 1046 Board of Medicine; requirements for licensure;
- SB 1178 Buprenorphine without naloxone; prescription limitations;
- SB 1180 Opioids and buprenorphine; Boards of Dentistry and Medicine to adopt regulations for prescribing;
- SB 1403 Cannabidiol; Board of Pharmacy to deschedule or reschedule upon certain publication;

- **Guidance Document 90-56 (Nurse Practitioner Practice Agreements)**

Ms. Yeatts reviewed the guidance document and noted revisions made by the Board of Nursing (BON) at their meeting on January 24, 2017. Ms. Yeatts explained that the Board of Medicine needs to either approve the changes made or recommend further revisions to send back to the BON.

Dr. Walker moved to adopt Guidance Document 90-56 as presented. The motion was seconded and carried unanimously.

- **Regulatory Action on Pain Management and Prescribing Buprenorphine**

Ms. Yeatts explained that the proposed regulations for review by the Board were emergency regulations. She explained the process of implementing emergency regulations and the process by which they will move from emergency regulations to final regulations. She then led the Board

through the review of the proposed regulations for any suggested edits, deletions, additions and revisions.

Section 18VAC85-21-10 Applicability. This section was approved with no revisions.

Section 18VAC85-21-20. Definitions. This section was approved with no revisions.

Section 18VAC85-21-30. Evaluation of the acute pain patient.

Dr. Toor asked if the PMP must be checked if the physician is planning to prescribe for more than 7 days. Ms. Yeatts stated “yes”, that is what is required by the Code.

The section was approved with no revisions.

Section 18VAC85-21-40. Treatment of acute pain with opioids.

Dr. Archer stated he did not believe the last sentence in this section is needed. Dr. Allison-Bryan noted that the last sentence was included to assist emergency room practitioners. There was a brief discussion among the Board members about whether to include “urgent care centers” in this section. Dr. Allison-Bryan stated that she believed it was not necessary to add “urgent care centers.”

Regarding section 18VAC85-21-40(2), Dr. Lee asked if another prescription after could be written after the first 14 days.

Dr. Allison-Bryan stated that the rationale for writing a second prescription should be documented in the treatment record.

Dr. O’Connor noted that documentation was a key element of these regulations. Since the Board is charged with enforcing them, documentation is essential to the Board’s task of determining whether the standard of care was met or not.

Regarding section 18VAC85-21-40(D), Dr. Archer stated that he did not believe this section was needed but would defer to the Board.

Scott Johnson quickly noted that MSV withdrew its objection to this section.

Dr. Melton noted that ASAM’s guidelines note that in some instances buprenorphine may be used in the treatment of pain.

Dr. Archer asked if these regulations allowed buprenorphine to be used for other purposes, and that this section appeared to be restricting a physician’s ability to prescribe.

Dr. Allison-Bryan stated that the purpose of the regulations was to assist physicians in treating opioid-dependent patients and to provide the Board with a tool to discipline physicians whose practices do not meet the standard of care.

This section as approved with the proposed staff revisions.

Section 18VAC85-21-50. Medical records for acute pain. This section was approved with the proposed staff revisions.

Section 18VAC85-21-60. Evaluation of the chronic pain patient.

This section was approved with the proposed staff revisions.

Section 18VAC85-21-70. Treatment of chronic pain with opioids.

Dr. Allison-Bryan noted that the second and third sentences of section 18VAC85-21-70(C) should be removed because they may be better suited for a guidance document. Dr. Brown agreed that a focused guidance document may be helpful and that the language under consideration of striking does track the language in other guidance documents.

Dr. Walker noted that subsection C states that buprenorphine may be prescribed for chronic pain but there was no mention of the mono-product. Dr. Melton stated that there is only one FDA-approved mono-product for pain that is not likely to be abused.

The Board requested that the second two sentences of 18VAC85-21-70(C) be removed and approved the rest of the section with the proposed staff revisions.

Section 18VAC85-21-80. Treatment plan for chronic pain. This section was approved with the proposed staff revisions.

Section 18VAC85-21-90. Informed consent and agreement for treatment for chronic pain. This section was approved with the proposed staff revisions.

18VAC85-21-100. Opioid therapy for chronic pain.

Dr. O'Connor noted that the language in subsection (D) requiring a urine drug screen or serum medication level at the initiation of chronic pain management and every three months for the first year of treatment may be burdensome. Dr. Allison-Bryan requested the term "annually" in section (D) be changed to "every six months."

Regarding subsection (E), Dr. Archer asked for clarification regarding the clause at the end of the section "treatment if indicated."

Dr. Melton replied that the treatment indicated would include options to refer the patient elsewhere.

Dr. Ali stated that once a patient presents with opioid addiction, the patient would be referred for treatment.

Dr. Walker asked for a clear definition of "opioid use disorder." Dr. Melton responded that opioid use disorder is when the opioid is being used for a purpose other than how it was intended to be used.

The section was approved with the proposed Board and staff revisions.

18VAC85-21-120. Medical records for chronic pain. This section as approved with the proposed staff revisions.

18VAC85-21-130. General provisions pertaining to prescribing of buprenorphine for addiction treatment.

Dr. Walker asked why “a licensed mental health provider” had been revised to “an appropriate mental health provider.”

Dr. Allison-Bryan responded that there were not enough licensed mental health providers who treat addiction. However, there are several health care professions which are not licensed, but are able to provide appropriate treatment.

Ms. Yeatts suggested that the language, “shall refer the patient to an appropriate mental health service provider as defined in 54.1-2400.1” may satisfy the Board’s concern.

The Board agreed and approved this section with the proposed staff revisions.

18VAC85-21-140. Patient assessment and treatment planning or addiction treatment. This section was approved with the proposed staff revisions.

18VAC85-21-150. Treatment with buprenorphine for addiction treatment.

The Board discussed whether to strike or maintain item number 3 in subsection (A). Dr. Melton stated that he supported this item. Dr. Harp noted that “opiate treatment programs” in subsection (B) should be edited to say “opioid treatment programs.” Language in subsection (I) was revised to coincide with the revision made in subsection (D) of 18VAC85-21-100. This section was approved with the proposed staff revisions.

18VAC85-21-160. Special populations in addiction treatment. This section was approved with no revisions.

18VAC85-21-170. Medical records for opioid addiction treatment. This section was approved with no revisions.

Dr. Reynolds moved to approve the proposed “*Regulations Governing Opioid Prescribing for Pain and Prescribing of Buprenorphine.*”

The motion was seconded and carried unanimously.

Licensing Report

Mr. Heaberlin provided a report on applications received and licenses issued. This report was for informational purposes only.

Discipline Report

Ms. Deschenes provided an update on case review. This report was for informational purposes only.

Appointment of a Nominating Committee

Dr. Allison-Bryan asked for volunteers to serve on the Nominating Committee to develop a slate of officers for the June Board's consideration. She appointed volunteers Jane Hickey, Deborah DeMoss Fonseca, Dr. Kenneth Walker, and as Chair, Dr. Wayne Reynolds.

Announcements

There were no announcements.

ADJOURNMENT

Dr. Allison-Bryan adjourned the meeting at 12:30 p.m.

Barbara Allison-Bryan, MD
President, Chair

William L. Harp, MD
Executive Director

Alan Heaberlin
Recording Secretary