

VIRGINIA BOARD OF MEDICINE MINUTES

October 23, 2008

Department of Health Professions

Richmond, VA

- CALL TO ORDER:** The meeting of the Board convened at 8:50 a.m.
- MEMBERS PRESENT:** Stephen Heretick, JD, President
Jane Piness, MD, Vice-President
Valerie Hoffman, DC, Secretary-Treasurer
Gen. Clara Adams-Ender, RN, MSN, USA Retired
Sandra Anderson Bell, MD
Ann T. Burks, JD
Malcolm Cothran, MD
Claudette Dalton, MD
William Epstein, MD
Gopinath Jadhav, MD
Jennifer Lee, MD
Stuart Mackler, MD
Juan Montero, MD
Karen Ransone, MD
Wayne Reynolds, DO
Ellen Shapiro, DPM
- MEMBERS ABSENT:** Roderick Mathews, JD
- STAFF PRESENT:** William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Ola Powers, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Amy Marschean, Assistant Attorney General
Sandra Ryals, Director, Department of Health Professions
Emily Wingfield, Deputy Director, Department of Health Professions
Elaine Yeatts, DHP Senior Policy Analyst
- OTHERS PRESENT:** Brynne Potter, CPM, Commonwealth Midwives Alliance
Deren Bader, CPM, DrPh, Chair, Midwifery Advisory Board
W. Scott Johnson, HDJN, PC
Michael Jurgensen, Medical Society of Virginia
Becky Bowers-Lanier, Commonwealth Midwives Alliance
Kim Mosney, CPM, LM, Commonwealth Midwives Alliance
Glenda Turner, Commonwealth Midwives Alliance
Joanna L. Davis, Commonwealth Midwives Alliance
Kevin McNally, Virginia Chapter, American College Radiology

Sara F. Krivanec, VA Birth PAC and International Cesarean Awareness Network
John Kemper-Garrett, US Oncology

EMERGENCY EVAUCATION PROCEDURES

Roll call showed sixteen Board members present, and a quorum was declared. The emergency evacuation procedures were read by Dr. Piness.

APPROVAL OF THE JUNE 26, 2008 MINUTES

Dr. Piness moved to approve the minutes of the June 26, 2008 meeting of the Board. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

Ms. Burks moved to adopt the printed agenda that appeared in the packet. The motion was seconded and carried unanimously.

Prior to public comment, Mr. Heretick extended a welcome to the newly appointed Board members. They were Jennifer Lee, MD, emergency medicine physician succeeding Dr. Clougherty in the 8th Congressional District, Stuart Mackler, MD, orthopedic surgeon succeeding Dr. Mosby in the 2nd Congressional District, and Wayne Reynolds, DO, family practitioner from Newport News succeeding Dr. Everhart as the osteopath-at-large.

Public Comment on Agenda Items

Brynne Potter, CPM addressed the Board regarding licensed midwifery practice in the Commonwealth. Ms. Potter voiced concern that midwifery was not being fully heard by the Board and implored the Board members to become more aware of the culture of home births and to utilize the expertise members of the Advisory Board on Midwifery.

Kevin McNally addressed the Board on behalf of the Virginia Chapter of the American College of Radiology regarding licensure for the profession of Radiologist Assistant (RA). He provided an overview of the profession and advised that the Virginia Chapter will seek legislation on this matter for consideration in the 2009 Session of the General Assembly. He referred to previous background information provided to the Advisory Board of Radiologic Technology and the Board, as well as a recently developed DVD of information provided to board staff. The information provided is intended to be helpful to the Board in the derivation of regulations should legislation be successful in this matter. Mr. McNally was thanked for his efforts.

Deren Bader, CPM, DrPH addressed the Board as the Chair of the Advisory Board on Midwifery. She acknowledged the Midwifery NOIRA to be discussed later on the agenda and advised that she would remain in attendance to assist with any questions on midwifery.

PRESIDENT’S REPORT

There was no report.

VICE-PRESIDENT’S REPORT

There was no report.

SECRETARY-TREASURER REPORT

There was no report.

EXECUTIVE DIRECTORS REPORT

Revenue and Expenditures

Dr. Harp advised that the Board has received more income from licensees than projected and the Board was well within budget.

Health Practitioner’s Intervention Program

Dr. Harp advised that the report was for informational purposes only and did not require any action.

Prescription Monitoring Program (PMP)

Dr. Harp informed the Board that on Saturday, November 15, 2008, the Virginia Prescription Monitoring Program and the Board of Medicine along with INOVA Health Care System would be hosting an “Issues in Pain Management and the Prescribing of Controlled Substances” symposium. Dr. Harp advised that Scott Fishman, MD, Chief of the Division of Pain Medicine and Professor of Anesthesiology at UC-Davis, Gene Rossi, Chief, Special Assistant, U.S. Attorney’s Unit, Office of the U.S. Attorney, Eastern District of Virginia, Joseph Rannazzisi, Deputy Assistant Administrator, Office of Diversion Control Drug Enforcement Administration, Nicholas Reuter, MPH, Senior Public Health Analyst, Substance Abuse and Mental Health Services Administration, and Marty Wunsch, MD, Associate Professor, Department of Behavioral Sciences, Center for Drug and Alcohol Research at the University of Kentucky will all be presenting information that will enhance attendees understanding of their responsibilities when utilizing opioids for pain management. The Honorable Mark Warner has been invited to begin the day.

Dr. Harp advised that the program will offer 4.5 hours of Category I Credits.

Ms. Wingfield encouraged the Board to take advantage of this opportunity and accredited the ability to obtain such quality speakers to Dr. Harp and his commitment to working with these entities.

Respiratory Care Advisory Board

Dr. Harp reported that the Board of Health Professions (BHP) had picked up the issue of polysomnography and the scope of practice in which polysomnographers engage. Dr. Elizabeth Carter, Executive Director of BHP, and Justin Crow, Fellow with BHP, were in attendance at the Advisory Board meeting on October 7, 2008 and reported on the information gathered to date. Chairman Brian Wilson had some helpful suggestions regarding where further information might be found that would be helpful to BHP as it evaluates the need for regulation of polysomnographers.

First Call for Nominations from the Federation of State Medical Boards (FSMB)

Dr. Harp advised the Board that FSMB's Nominating Committee is accepting names of individuals to be considered as candidates for various elected offices and committee appointments. Dr. Harp recognized Gen. Adams-Ender as having been very participatory with FSMB; she indicated she would be interested in seeking a leadership position at FSMB.

Ms. Burks moved to nominate General Adams-Ender for a committee appointment at FSMB. The motion was seconded and carried.

New Board Staff Introduction

Dr. Harp introduced the Board of Medicine's newest staff members. Denise Mason, previously with the agency's Human Resource Section will be serving as the Board's full-time receptionist, and Beverly Hutson-Bryan, previously with the Behavioral Sciences Boards, will be handling all of the financial transactions generated by applicants and licensees. Mr. Heretick welcomed them to the Board and wished them well in their new positions.

Membership Invitation

Dr. Harp briefly reviewed the membership invitation from the Citizen Advocacy Center. General Adams-Ender moved that the Board pursue membership; the motion was seconded and carried.

American Medical Association Article on African-American Physicians and Organized Medicine

Dr. Harp informed the Board that at the September Legislative Committee Meeting, General Adams-Ender provided an excerpt of an article printed in The Journal of the American Medical Association on African-American physicians.

General Adams-Ender commented on some of the points in the article. She stated that the publishing of this research article portends lessening of any remaining divide in the medical community and another blow to the lingering vestiges of racism in American society.

COMMITTEE AND ADVISORY BOARD REPORTS

Dr. Ransone moved to accept the Committee and Advisory Board report en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Marschean advised that on September 16, 2008 Dr. Vuyyuru filed suit in Federal District Court, naming several past and current Board members, past and present Board staff and the former DHP Director, and claiming conspiracy against him and his practice. Mr. Steve Hall, AAG has filed a motion to dismiss.

Dr. Ahmed filed suit in the Circuit Court of the City of Alexandria appealing the decision of the Board to revoke his license. Ms. Marschean noted that the Board has never been served officially, and it appears the deadline to perfect service has passed. Ms. Marschean then informed the Board that she had presented a plea in bar in Alexandria on Wednesday, October 22, 2008 and will provide updates as the process moves forward.

Director of DHP – Sandra Ryals

Ms. Ryals gave an update on DHP's and the Board's three key performance measures and highlighted the progress on the resolution of patient care cases in 250 days.

Ms. Ryals informed the Board that for the first time, DHP is very close to achieving the 250 day target. Ms. Ryals reminded the Board that the goal is to resolve 90% of complaints related to patient care within 250 business days by the end of FY 2009.

Ms. Ryals reported that at the DHP orientation on October 22, 2008, Neal Kauder of Visual Research provided the closure rates for the 3rd quarter for DHP (85%) and Medicine (92%).

Ms. Deschenes gave accolades to those board members that went above and beyond the call of duty to review probable cause cases. Ms. Deschenes acknowledged the effort that and Dr. Matusiak and Dr. Harp put into resolving the older cases that were part of the backlog.

Dr. Harp then provided a numerical breakdown of actions taken by the Board in the last year. Included were: Reprimands-88, Probation-17, Terms-68, Suspensions-52, Revocations-7, Surrenders-14, Violation/no sanction-23, Reinstatement/renewal denied-5, Charges dismissed-13, Exonerations-1, for a total of 398 actions.

Ms. Ryals stated that the real challenge now is to maintain the performance to date, ensuring accountability for actions and transparency. She applauded all for their contributions to the performance so far and for efforts that will be expended in the future.

Mrs. Ryals thanked Dr. Lee, Dr. Mackler and Dr. Reynolds for attending the new board member orientation and also thanked Dr. Hoffman for her presentation on the Board member experience.

Ms. Ryals acknowledged her communication with Board Executives regarding the legislative proposals of the Joint Boards of Nursing and Medicine. She advised that the proposal is a work

in progress, and the two key points are cost savings and the possible elimination of the Joint Board.

Dr. Piness expressed concern regarding the placement of a DEA certificant on committees and panels in prescribing cases. Ms. Ryals responded that in those cases, there would be a physician on the panel. Ms. Ryals also noted that there is no intention to sever the relationship between the physician and the nurse practitioner, and that collaboration and consultation is always encouraged.

Ms. Ryals then gave the Board an update on the Health Practitioners' Intervention Program (HPIP). Ms. Ryals advised the Board that the contract with Virginia Commonwealth University (VCU) came to an end in 2007, and by her request, was extended one year for assessment. Ms. Ryals stated that, given the climate of the economy, the department was not in a position to continue spending two million dollars on 600 participants and anticipates that some changes will be made. Ms. Ryals advised that Jay Douglas, Executive Director for the Board of Nursing, Scotti Russell, Executive Director for the Board of Pharmacy, Peggy Wood, DHP HPIP Liaison, Dr. Harp and Emily Wingfield have been working together to consider necessary core components for the Virginia HPIP with attention to how programs in other states are structured.

Board of Health Professions

Dr. Harp referred to the request from the Advisory Board on Respiratory Care regarding polysomnography (page 77).

Department of Health Professions

There was no report.

Podiatry Report

There was no report.

Chiropractic Report

There was no report.

NEW BUSINESS

Chart of Regulatory Actions

Ms. Yeatts briefly reviewed the stages of pending actions highlighting OTA licensure (effective November 1, 2008). Ms. Yeatts advised that Board staff recommends a grace period for licensure for this profession.

Periodic Review NOIRA

Ms. Yeatts advised that, due to the diligence of the Board, there would not need to be many revisions. However, Executive Order 36 requires that all regulations be reviewed a least once every four years. Ms. Yeatts then informed the Board of the recommendations from the Legislative Committee.

Dr. Ransone moved to initiate action to amend Chapter 20 of the Board's regulations with the publication of a NOIRA to address the issues/changes/clarifications identified for consideration during the periodic review. The motion was seconded and carried unanimously.

Report to Senator McDougle on Radiology Assistants

Ms. Yeatts reminded the Board of Mr. McNally's and Dr. Harp's earlier comments regarding this emerging profession. Dr. Harp advised that he and Ms. Yeatts will review the documentation and DVD provided by Mr. McNally and present a summary to Senator McDougle. Ms. Yeatts pointed out that the Board was not being asked to take a position on whether or not licensure should be required, but to provide information by way of a report to Senator McDougle.

Midwifery NOIRA

Ms. Yeatts advised that the purpose of the NOIRA was to determine whether or not changes were necessary to address concerns expressed about midwifery care in certain circumstances.

Dr. Bader remarked that the Advisory Board on Midwifery would like to be involved in the regulatory process and would support the Board convening a workgroup that included Advisory Board members to consider any revisions that might be necessary to the existing regulations.

After a brief discussion, Dr. Reynolds moved that 1) the current NOIRA be withdrawn, 2) a workgroup consisting of representatives from medicine and midwifery be convened, and 3) a revised NOIRA be presented for consideration clarifying the Board's intent with statutory provisions. The motion was seconded and carried unanimously.

Proposed Pilot – Online CME Program for Physicians

Dr. Harp briefly presented a proposed online CME program for physicians that was described in a letter from Karen Remley, MD, State Health Commissioner. The purpose of the program would be to provide Virginia physicians with laws, regulation and guidance essential to their day-to-day practice.

Dr. Harp indicated that also amenable to an online format would be an orientation to the Board of Medicine which could highlight topics such as medical recordkeeping, boundaries, proper prescribing, impairment, etc.

After discussion, Dr. Bell moved to approve the models as presented. The motion was seconded and carried. Dr. Dalton advised that she would check into the availability of AMA CAT I for the modules.

Dr. Dalton then initiated a discussion on the Emerging Professions presentation found in the Board of Health Profession's report at page 82 of the Board's packet. She commented that requiring personnel involved in central service/sterile processing would be a positive step since there is no uniformity to the current training.

Ms. Ryals advised that this process is in its infancy and the focus is hospital settings. Mr. Heretick requested Dr. Montero to keep up with the issue.

Consideration of Summary Suspension

Mr. Heretick acknowledged the arrival of Frank Pedrotty, AAG who presented a case for possible summary suspension.

ANNOUNCEMENTS

There were no additional announcements.

NEXT SCHEDULED MEETING: February 19, 2009

ADJOURNMENT: With no further business to conduct, the meeting adjourned at 11:30 a.m.

Stephen E. Heretick, J.D.
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Operations Manager