

**VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES**

Friday, September 19, 2008

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting of the Committee convened at 8:50 a.m.

MEMBERS PRESENT: Jane Piness, MD, Vice-President, Chair
Ann Burks, JD
Claudette Dalton, MD
Juan Montero, MD
Robert Mosby, MD
Wayne Reynolds, DO

MEMBERS ABSENT: Roderick Mathews, JD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director, Discipline
Ola Powers, Deputy Executive Director, Licensing
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Amy Marschean, Assistant Attorney General
Sandra Ryals, Director, DHP
Emily Wingfield, Assistant Director, DHP
Elaine Yeatts, DHP Policy Analyst

OTHERS PRESENT: Michael Jurgensen, Medical Society of Virginia
Scott Johnson, HDJN

ROLL CALL

EMERGENCY EVACUATION INSTRUCTIONS

Dr. Mosby read the Emergency Evacuation Instructions.

APPROVAL OF MINUTES OF JANUARY 25, 2008

Dr. Mosby moved to approve the minutes of January 25, 2008 as presented. The motion was seconded and carried.

ADOPTION OF AGENDA

Dr. Montero moved to amend the agenda to include discussion of the status of a potential bill

regarding lay midwives that might be introduced in the 2009 Session of the General Assembly. After discussion, the motion was seconded and carried.

PUBLIC COMMENT

Dr. Piness extended a welcome to the guests.

There was no public comment.

NEW BUSINESS

Director's Report

Ms. Ryals presented an update on the DHP's legislative process and advised that the deadline for submitting the formal legislative package was August 2008.

Ms. Ryals advised that one of the legislative proposals under consideration would allow a prescriber to access a patient's data in the Prescription Monitoring Program (PMP) database with simply notifying the patient that such might occur, rather than requiring the signed permission of the patient. Another proposed change would facilitate the sharing of Virginia PMP information with other state PMP's. Ms. Ryals stated that this proposed change would be useful when there appeared to be a violation of criminal law; proper steps would be in place to ensure that this information was only available to authorized agents. Ms. Ryals noted that this proposal has received positive comments from all parties.

Ms. Ryals took a moment to remind the Committee that these proposals are required to pass through the offices of Department of Planning and Budget, the Secretary of Health and Human Services, and the Governor's Policy Office.

Ms. Ryals provided the Committee with a brief summary of past efforts by the Department to require criminal background checks on applicants and licensees; the initiative has not been adopted for a number of reasons.

Ms. Ryals stated that a proposal submitted recently would only require a background check on applicants prior to licensure by the Board of Nursing due to an anticipated requirement related to nurse compact licensure.

Ms. Ryals does not anticipate that criminal background checks will be implemented for all boards in the department in the near future.

Another legislative proposal involves the establishment of administrative fees to cover the cost of disciplinary hearings. Currently, fines levied in the disciplinary process go into the Commonwealth's Literary Fund. Administrative fees, if established, would go into DHP's account. Ms. Ryals stated that the Department of Professional and Occupational Regulation and the Board of Accountancy both currently have the authority to collect these fees.

Ms. Ryals described a proposal that has been favorably received related to the healthcare workforce data collection center. She said this effort will greatly assist the State Health Commissioner with helpful information on the physician population.

Ms. Ryals advised the Committee of the last proposal currently under advisement relating to the Governor's Commission on Healthcare. She reminded the board members of the need to address the workforce healthcare shortages and cut down on any unnecessary obstacles in order for physician extenders to provide care to those in need. Ms. Ryals acknowledged the formation of a workgroup, and thanked Mike Jurgensen and Scott Johnson of the Medical Society of Virginia for their valuable input and participation. Ms. Ryals stated that the drafting process is still ongoing as the group works towards a consensus. The Secretary of Health and Human Resources is committed to moving this forward in a good faith effort. Ms. Ryals emphasized that this move was not an attempt to achieve independent practice for physician extenders.

Ms. Ryals advised that all of these proposals were a work in progress and opened the floor for questions.

Dr. Montero said he wanted to discuss where the Board stood on the issue of lay midwives and stated that the concerns voiced by the Board should be carefully considered in any action taken by the Board.

Ms. Yeatts informed the Committee that the NOIRA approved by the Board had not been published, and that there were no current actions pending for midwifery. This issue is currently being reviewed by the Executive Branch and the Board can expect it to be an item for discussion at the Full Board meeting October 23, 2008.

Dr. Dalton asked Ms. Ryals for guidance on how to understand a regulatory process that appears to lead to arbitrary denials. Dr. Dalton referenced a previous issue involving the safety of the public and thinks that the Board's concern about the high-risk pregnancy in the practice of midwifery will get similar handling.

Ms. Ryals reassured the Committee that the process is not arbitrary and she believes that the Board has taken the steps it felt necessary to address these issues and that by stating its position, its concerns have been relayed to the appropriate Offices.

Dr. Piness suggested that there be a mechanism for feedback between the Administration and the Board that would allow for two-way discussion and possible compromise in any of these issues. She said that without this communication, the Board could be misconstrued to be supporting a political agenda, rather than protecting the public through its thorough understanding of science and medicine.

Ms. Ryals again assured the Committee that their concerns have been heard and that advocacy efforts have been ongoing and every single point ever raised has been relayed.

Dr. Harp acknowledged the support from the DHP Director's office and stated for the

record that this issue is not the Board against midwifery, but the protection of the public. He is optimistic that a balanced approach can be achieved.

Periodic Review of Chapter 20 – Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic

Comment: Mixing, Diluting and Reconstituting (MDR) - Ms. Yeatts referred to the letter received from the Medical Society of Virginia (MSV) regarding the MDR issue. Chapter 797 of the USP has been revised, and the revisions may have implications for the Board's regulations. By way of history, Ms Yeatts reminded the Committee that in 2005 Legislation was passed at the request of practitioners to carve out office MDR from the definition of compounding. The law charged the Board of Medicine with the responsibility of developing regulations; an ad hoc committee was constituted, and the regulations developed were adopted by the Board. Dr. Harp recalled for the Committee that Dave Newton, PharmD and chair of the USP 797 Committee, was on the Board's Ad Hoc Committee.

Dr. Harp pointed out that currently 18VAC20-410(A) states that any mixing, diluting or reconstituting of sterile products that does not meet the criteria for immediate-use as set forth in 18VAC20-400 A shall be defined as low- medium, - or high risk compounding under the definitions of Chapter 797 of the U.S. Pharmacopeia (USP) and current Board of Medicine regulations. The revision of USP has changed the definition of immediate-use to be just that.

Dr. Harp reiterated that USP is a private organization, that its standards are best practices to protect the public and that enforcement is the responsibility of regulatory agencies. The Board of Medicine must meet its obligation to protect the public in this matter. Dr. Harp stated there needed to be a clear, revised definition of immediate-use. The ISO Class 5 environment may prove to be challenging for small practices. Whatever the Board does in revising its regulations, it should not deviate significantly from USP, and it must protect the public.

After further discussion, Dr. Dalton moved for the Committee to consider a NOIRA to reconcile the difference between USP797, current regulations and all other issues identified in the periodic review. Dr. Dalton added that, if necessary, an expert in sterile compounding be engaged to work with the Board to help with any sticking points. The motion was seconded and carried unanimously.

Comment: American Chiropractic Association Letter

Ms. Yeatts informed the Committee that the American Chiropractic Association, in a proactive effort to improve the accuracy of Medicare claims, is requesting the Board to consider the requirement of continuing education in documentation and recordkeeping as a condition for re-licensure.

After a brief discussion, the Committee agreed that this was not an issue the Board should undertake.

Periodic Review of Chapter 20 – Regulations Relating to the Practice of Medicine, Osteopathy, Podiatry and Chiropractic

Ms. Powers and Ms. Yeatts identified the following regulation sections as needing review and subsequent updates:

18VAC85-20-22 – Required Fees

18VAC85-20-120 – Prerequisites to licensure

18VAC85-20-220 – Temporary licenses to intern and residents

18VAC85-20-235 – Continued competency requirements for renewal of an active license

After the review, Dr. Dalton moved to recommend to the Board that it initiate amending Chapter 20 with publication of a Notice of Intended Regulatory Action to address the issues/changes/clarifications identified in the periodic review. The motion was seconded and carried unanimously.

Announcements

Ms. Deschenes announced that staff would be presenting pre-hearing consent orders at the conclusion of the meeting. Ms. Deschenes also informed the Committee that there was an expectation of a full disciplinary agenda for the October 23-25 meeting. She asked that the board members come prepared to work and stay until Saturday if necessary.

Dr. Harp announced that Scott Fishman, MD will be the guest speaker at the Prescription Monitoring Program's Annual Conference scheduled for Saturday, November 15, 2008 at INOVA Fairfax Hospital. Dr. Harp stated that this program will offer 4.5 hours of Category I continuing education hours and should be very informative for the attendees.

Next meeting – January 23, 2009

Adjournment - With no other business to conduct, the meeting adjourned at 11:35 a.m.

Jane Piness, M. D., Vice-President
Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary