

# Final Approved/8-10-07

## VIRGINIA BOARD OF MEDICINE EXECUTIVE COMMITTEE MINUTES

Friday, April 6, 2007

Department of Health Professions

Richmond, VA

**CALL TO ORDER:** The meeting convened at 8:36 a.m.

**MEMBERS PRESENT:** Malcolm Cothran, MD, President  
Gen. Clara Adams-Ender, RN, MSN, USA Retired  
Sandra Bell, MD  
Suzanne Everhart, DO  
Stephen Heretick, JD, Vice-President  
Ellen Shapiro, DPM

**MEMBERS ABSENT:** Valerie Hoffman, DC  
Jane Piness, MD, Secretary/Treasurer

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, Deputy Executive Director - Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Ola Powers, Deputy Executive Director - Licensure  
Sandra Ryals, Director, DHP  
Emily Wingfield, Chief Deputy Director, DHP  
Amy Marschean, Assistant Attorney General  
Elaine Yeatts, DHP Senior Policy Analyst  
Colanthia Morton Opher, Recording Secretary

**OTHERS PRESENT:** W. Scott Johnson, MSV  
Mike Jurgensen, MSV

### ROLL CALL

### Emergency Evacuation Procedures

Dr. Cothran read the Emergency Evacuation Procedures.

### Adoption of Agenda

Mr. Heretick moved to adopt the agenda as amended. The motion was seconded and carried.

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## **Public Comment on Agenda Items**

There was no public comment on agenda items.

## **Approval of the December 8, 2006 Minutes**

General Adams-Ender moved to accept the minutes of December 8, 2006. The motion was seconded and carried.

## **NEW BUSINESS**

### **Regulatory Actions**

Ms. Yeatts provided an updated Chart of Regulatory Actions for informational purposes only.

#### Adoption of a Fast-Track Action for Chapter 10 - PPG

Ms. Yeatts informed the Committee that the Public Participation Guidelines (PPG) are required for all state agencies with rule-making authority and exist to ensure that members of the public will set notices and opportunities for involvement in the regulatory process. Dr. Bell moved to adopt the recommended amendments to clarify and update Chapter 10, Public Participation Guidelines by fast-track action. The motion was seconded and carried.

#### Adoption of Fast-Track Regulations – Chapter 30 – Nurse Practitioner

Ms. Yeatts informed the Committee that the Board of Nursing has drafted proposed regulations in response to a Petition for Rule-making requesting an inactive licensure status to address the inability for a Registered Nurse with an inactive RN license to be licensed or practice as a licensed nurse practitioner. General Adams-Ender moved to accept. The motion was seconded and carried.

### **NBPME Offer to Determine Eligibility for Part III Candidates**

Ms. Powers informed the Committee that the National Board of Podiatric Medical Examiners (NBPME) has offered to assume total responsibility for determining the eligibility of an applicant to sit for Part III. It was noted that this process is analogous to the current process with the applicants for USMLE. In addition, it was also noted that the Credentials Committee recommends the Board accept NBPME's offer.

Dr. Bell moved to accept. The motion was seconded and carried.

### **Letters of Recommendation for Reinstatement**

Ms. Powers informed the Committee of the current reinstatement process which includes the requirement for applicants to submit two letters of recommendation in addition to other documentation. Ms. Powers stated that this requirement was cumbersome and burdensome for

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the applicant as well as for board staff. Ms. Powers pointed out that current law §54.1-2904 **Biennial renewal of licenses; copies; fee; lapsed license; reinstatement; penalties** does not mandate this as a requirement and would like the Committee to consider discontinuation of this paperwork. Dr. Everhart moved to approve. The motion was seconded and carried.

### **ABMS Recertification Exam as a Competency Assessment**

Dr. Harp advised the Committee that a physician subject to a competency assessment had asked the Board to consider acceptance of recertification by an American Board of Medical Specialties member board as evidence of competence and satisfaction of the requirement.

After discussion, with concerns expressed by some of the Committee members, Dr. Everhart, moved to table the item for now and entertain the idea of using MOC as another option as evidence of competence and satisfaction of §54.1-2912.3 at a later date. The motion was seconded and carried.

Dr. Harp informed the Committee that staff was in the process of drafting a standardized form for use by evaluators performing assessments in order to ensure consistent reports to the Board. Dr. Harp advised that a draft document will be presented at the June 22<sup>nd</sup> board meeting for consideration.

### **Office-Based Surgery Guidelines or Regulations**

Dr. Harp informed the Committee that in response to a written request by a Virginia physician the Legislative Committee reviewed the North Carolina Medical Board's Position Statement on Office-Based Procedures at their January 26, 2007 meeting. After discussion, they recommended that board staff obtain feedback from North Carolina and the surgical members of the Board before pursuing.

Dr. Harp advised that he had the opportunity to speak with Dave Henderson, Executive Director, North Carolina Medical Board who indicated the Statement has been very helpful. Dr. Harp pointed out that the NC document was more comprehensive than Virginia's in that it addresses office-based surgical procedures as well as anesthesia. Dr. Harp informed the Committee that it was a split decision between the surgical members of the Board.

Dr. Harp stated that the Committee may want to consider a companion regulation to the office-based anesthesia regulations that will set the bar for office-based procedures.

Ms. Yeatts remarked that Virginia may have a different point of view in the use of a guidance document than North Carolina since the latter implies disciplinary actions may be taken if warranted. Ms. Yeatts also stated it would necessitate amendments to the current regulation in order for Virginia to do a document on the same scale. Ms. Yeatts then raised the question as to whether or not the Board has the authority to offer a special credential to a sub-set of licensees to do special procedures.

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After discussion, Dr. Everhart moved that board counsel look into the legal ramifications prior to pursuing a guidance document or regulatory amendment regarding office-based surgical procedures. The motion was seconded and carried.

Dr. Harp advised that he would convey the Committee's decision to the author of the original letter.

### **ADD Position Letter on the Practice of Medicine**

Dr. Harp advised that this document was provided for information only and did not anticipate a discussion on this item.

Dr. Everhart, who sat on the Ad Hoc Committee on Laser Hair Removal, remarked that the Board of Cosmetology and Barbers did a great job on their esthetics' regulations but does have concerns about some issues that were not addressed in the document (continuing education requirements, recognition of adverse reactions or complications, etc.). In addition, Dr. Everhart stated that document did not address the facility's responsibility to lay out their policy and procedures in cases of adverse reactions or if complications occurred similar to the draft document produced by the Ad Hoc on Laser Hair Removal.

In addition, Dr. Everhart pointed out that in the reply from Governor Kaine to the dermatology society he stated that he considered the use of lasers to be the practice of medicine. Dr. Everhart stated that this statement creates a concern since there is no current definition in regulations as to what a laser is, and nothing that distinguishes intense pulse light devices from lasers.

No action was taken.

### **DHP Director's Report on Key Performance Measures for the Board of Medicine**

Sandra Ryals, Executive Director, Department of Health Professions walked through a PowerPoint presentation for the Committee of the key performance measures and expectations specific to the Board of Medicine. Ms. Ryals reviewed the current disciplinary case process and provided statistics on historical trends and current caseload. Ms. Ryals informed the Committee of the initial steps that DHP has taken to begin to meet the 250 day case closure goal. Ms. Ryals asked the Committee to examine the Board's current case process and identify strategies, find complementary methods to streamline the process and implement actions to focus on patient care cases. Ms. Ryals asked the Committee to consider the use and advantages of delegation to agency subordinates and the possibility of additional delegation of authority to board staff noting the current Board of Medicine's limitations.

After discussion, Dr. Everhart offered a 4-prong motion that, in addition to blitzing now to close old cases at the board, suggested the following: 1) implement the option for agency subordinates to hear cases as allowed currently in the Board's regulations 2) recommend to the Full Board that a NOIRA be published to expand on the types of cases that can be heard by agency subordinates 3) allow a single board member to hear a case as an agency subordinate and 4) delegate probable cause to professional staff for cases going forward to an informal. The motion was seconded.

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After further discussion, the motion was carried unanimously. [Note: #4 will require an amendment to the Board's Bylaws]

### **Announcements**

Ms. Deschenes announced that presentation of PHCOs for consideration and case review would begin immediately following adjournment of the Executive Committee meeting.

Dr. Harp announced that Dr. Bell was named the number one pediatrician in Richmond according to Richmond Magazine, and Brian Walsh, Chair of the Advisory Board on Respiratory Therapy graces the cover of the National AARC Times for his work in pediatrics at UVA.

Next scheduled meeting: August 10, 2007

**Adjournment:** With no other business to conduct, the meeting adjourned at 9:35 a.m.

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Malcolm L. Cothran, MD  
President

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William L. Harp, M.D.  
Executive Director

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Colanithia Morton Opher  
Recording Secretary