

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

Thursday, October 25, 2012

Department of Health Professions

Richmond, VA

CALL TO ORDER: Dr. Hoffman called the meeting to order at 8:45 a.m.

ROLL CALL

MEMBERS PRESENT: Valerie Hoffman, DC, President
Stuart Mackler, MD, Vice-President
Wayne Reynolds, DO, Secretary-Treasurer
Deeni Bassam, MD
Sandra Bell, MD
Randy Clements, DPM
Claudette Dalton, MD
Irina Farquhar, PhD
Stephen Heretick, JD
Robert Hickman, MD
Gopinath Jadhav, MD
Jane Maddux
Jane Piness, MD
Karen Ransone, MD

MEMBERS ABSENT: Kamlesh Dave, MD
Michael Signer, PhD, JD
Kenneth Walker, 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
Beulah Archer, Licensing Specialist
Dianne Reynolds-Cane, MD, DHP Director
Arne Owens, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, AAG, Board Counsel

OTHERS PRESENT: Mike Jurgensen, MSV
Jerry Canaan, HDJN
Carl Ameringer, PhD, JD, Wilder Institute

EMERGENCY EGRESS PROCEDURES

Dr. Mackler read the emergency egress procedures for Conference Room 2.

APPROVAL OF THE JUNE 21, 2012 MINUTES

After minor revisions, Dr. Mackler moved to accept the minutes of June 21, 2012. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

Dr. Mackler moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Hoffman acknowledged and welcomed the guests that were present. Dr. Harp introduced Dr. Carl Ameringer, Professor with the VCU L. Douglas Wilder School of Government and Public Affairs. Dr. Harp noted that Dr. Ameringer was interested in medical regulation as it pertains to the overutilization of medical services.

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Mr. Owens began by informing the members that Virginia had been selected by the National Governors Association (NGA) to receive a year-long \$45,000 grant to participate in an NGA sponsored Prescription Drug Abuse Reduction Policy Academy.

Dr. Reynolds-Cane advised that she and Ralph Orr recently attended the first national meeting of the NGA Policy Academy at which strategies to reduce statewide drug abuse were discussed. Dr. Reynolds-Cane said that the main talking points of the session were education, use of the PMP, proper disposal, and enforcement. She also noted that the development of a statewide workgroup was underway, and several members of DHP are already poised to participate. There will be some in-state sessions coming up in the spring.

Dr. Reynolds-Cane then informed the Board of DHP's proactive measures to address inquiries from the media regarding the meningitis outbreak.

Dr. Reynolds-Cane added that Governor McDonnell is looking to make Virginia the friendliest state to the military and to military veterans. She advised that DHP provides links to other state

and federal agencies on its website. DHP is still developing a crosswalk between the military occupation specialties and Virginia regulatory boards' licensing requirements. Mr. Owens remarked that it becomes more of a challenge when dealing with the technician occupations because the connections to Virginia's regulations are not as clear-cut.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Hoffman informed the Board that, along with Dr. Dalton, Dr. Harp, Mr. Heretick, and the Executive Directors from the Board of Nursing and Board of Pharmacy, she attended the Federation of State Medical Boards Tri-Regulator Symposium on October 17th and 18th in Washington, DC. The meeting was the first of its kind with a focus on the history of state-based medical, nursing and pharmacy regulation in the United States. Dr. Hoffman commended Mr. Heretick on his presentation about the opioid problem and provided highlights from some of the other speakers, including Joseph Rannazzisi, R.Ph., Deputy Assistant Administrator, Office of Diversion Control at the Drug Enforcement Administration. Dr. Reynolds-Cane added that having federal regulations for methadone management programs is valuable, but the fact that methadone prescribed and dispensed by such programs cannot currently be submitted to PMP's is problematic. She also noted that states can implement legislation requiring these programs to check the PMP before developing a plan for the patient, but if they don't, how do you enforce it? DHP will be monitoring the progress of this issue with NGA's Policy Academy as it proceeds.

VICE-PRESIDENT'S REPORT

Dr. Mackler reported that he recently attended VCU's Pain Management and Spine Symposium and thought that it was well-presented.

SECRETARY-TREASURER'S REPORT

There was no report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reported that the Board is still operating well within budget. The cash balance as of September 30, 2012 was \$8,539,018. Dr. Harp noted that we are still in the renewal year for the big four (MD, DO, DC, DPM) and two of our allied professions (OT and OTA). The bulk of the Board's expenditures remain Data, Administrative Proceedings, Enforcement, the Director's Office and the Office of the Attorney General.

- Annual Report to the Medical Society

Dr. Harp highlighted some of the information submitted as part of the annual report to the Medical

Society, including the need for appointments/reappointments, significant changes to the definition of surgery as outlined by HB 266 and SB 543, and the results of the Board's first round of MDR inspections.

- Mixing, Diluting or Reconstituting Inspections

Dr. Harp informed the Board that a total of 44 practitioners were identified for the audit. The vast majority of practitioners were found to be in compliance with the MDR regulations. Several licensees received advisory letters.

- Advisory Board Appointments

Dr. Harp reported the appointments of Kim Pekin, LM and Bettie Sheets, LM to the Advisory Board on Midwifery. Karsten Konerding, MD was appointed to the Advisory Board on Radiologic Technology. In addition, Kenneth Walker, MD has been appointed to fill the 9th District seat previously held by William Epstein, MD.

- Board of Health Professions Appointment

Dr. Harp congratulated Irina Farquhar, Ph.D., who was appointed by Governor McDonnell as Medicine's representative on the Board of Health Professions. Dr. Farquhar advised that she was elected Vice-Chair of the Board of Health Professions.

- Enforcement and Administrative Proceedings (APD) Hours

Dr. Harp reviewed the financial allocation reports of costs associated with services bought by the Board from Enforcement and APD. He pointed out that Nursing and Medicine are the biggest users of these services.

- Key Performance Measures

Dr. Harp applauded Dr. Matusiak for keeping the Board above 90% in the measure of closing cases in 250 days or less.

- Email Addresses

Dr. Harp briefly reviewed the email report provided by the DHP Data Division. He noted that Data has been able to collect about half of our licensees' e-mail addresses for regular business contact.

- Use of Pre-Hearing Consent Orders in Continuing Education Audits

Dr. Harp referred to the memorandum distributed to the executive directors of the boards asking that their boards consider, "whether it is appropriate for Board staff to issue a standard expedited pre-hearing consent order to resolve cases involving non-compliance with CE requirements that

were not imposed by a disciplinary Order”.

Dr. Harp and Ms. Deschenes provided the Board with the history of how continuing education audits and non-compliant licensees were handled. After a brief discussion, it was determined that the necessary authority has already been delegated to board staff, and no other action is necessary.

- State Board of Social Services Initiative

Dr. Harp spoke to the correspondence sent to Dr. Reynolds-Cane from The Honorable Robert C. Spadaccini, Chairman of the State Board of Social Services. Mr. Spadaccini’s letter notes that the Child Fatality Review Team recommends that DHP and the Board of Medicine “*require as a condition of licensure that all physicians, nurse practitioners and physician assistants receive at least eight hours of CMW training in identifying and reporting child abuse and neglect-related injuries and fatalities. This training should be readily accessible to providers through internet-based courses which provide CME credit.*”

Dr. Harp reminded the Board that a similar request from Dr. Leah Bush was discussed by the Board in 2009. At that time, the Board saw heat-related deaths in vehicles as an extremely important issue, but did not think a CME requirement for physicians would have much preventative effect on these unfortunate occurrences. The decision of the Board in 2009 was to decline the requirement for specific CME.

Ms. Yeatts informed the Board that a response to Mr. Spadaccini’s letter was sent inviting him or his representative to attend Medicine’s Full Board meeting. To date, no response has been received.

After a discussion, and with the knowledge that a DHP response had been sent, Dr. Dalton moved that the Board take no action at this time. The motion was seconded and carried.

- Health Practitioners Monitoring Program Statistics

This report was for informational purposes only. No action was required.

- Prescription Monitoring Program (PMP) Update

Dr. Harp gave an update on the current status of the PMP noting that it averages over 3,000 requests daily. He commented that new law from the 2012 Session of the General Assembly allows the PMP to provide information to federal authorities, which should strengthen their ability to fight drug diversion.

The Board discussed the possibility of requiring all newly licensed prescribers to sign up with the Prescription Monitoring Program; requiring sign-up at the time of renewal was also discussed. No motion was made.

- National Board of Medical Examiners (NBME) Test-Writing Workshop

Dr. Bassam advised that he participated in NBME's test-writing workshop and found it very educational and an overall positive experience.

- National Board of Medical Examiners At-Large Nominee

Dr. Harp announced to the Board that Michelle Whitehurst-Cook, MD was recommended by Board staff as a candidate for an at-large seat on the National Board of Medical Examiners. Dr. Whitehurst-Cook is a very well-respected professor of family medicine and currently serves as the Associate Dean for Admissions at VCU School of Medicine.

- New Role for Boards in OAG Audits-Code Section 32.1-320(B)(1)

Dr. Harp informed the Board that, in accordance with this law, the Board of Medicine shall serve in an advisory capacity to the Office of the Attorney General if the Office is conducting audits or investigations of Board licensees.

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

- Letter from the Virginia Academy of Clinical Psychologists (VACP)

Dr. Harp advised the members that VACP sent correspondence to Governor McDonnell offering its support to the Board of Medicine if a permanent Advisory Board for the Applied Behavior Analysts (ABA) is ever created. VACP believes that it would be beneficial for one or more doctoral level clinical psychologists to serve on such a board.

- Free Special Purpose Examination (SPEX®)

Dr. Harp announced that the Federation of State Medical Boards is still offering a free SPEX® examination to a Board member interested in taking it and providing feedback on the new format.

- Federation of State Medical Boards Maintenance of Licensure (MOL) Initiative Update

Dr. Dalton provided a brief synopsis of her committee's report that was presented to the FSMB Board on recommendations for clinically inactive physicians and MOL.

She advised the MOL panel was receptive to her committee's ideas, but the whole MOL package is still a work in progress. She hopes that the inactive practitioners looking to return to active practice will view her committee's recommendations in a favorable light.

Mr. Heretick stated that Dr. Dalton is one of the most persuasive individuals there is in regards to MOL and when she speaks, people pay close attention. Mr. Heretick said that there is a lot of work to do and the Board of Medicine needs to do what it can to move the Commonwealth and

the nation forward with what can and should be done with MOL issues.

Dr. Harp reminded the Board that it had agreed to participate in the MOL pilot process by trying to figure out how to integrate the requirements of MOL with the Board's renewal process. Dr. Harp informed the Board that he had just completed FSMB's readiness survey. The Board also agreed to participate in the review of information that will introduce MOL to physicians and the public.

Dr. Hoffman called for a 15-minute break. The Board reconvened at 10:29 a.m.

Committee and Advisory Board Reports

Dr. Dalton moved to accept the committee reports en bloc. The motion was seconded and carried unanimously.

Other Reports

Assistant Attorney General

Ms. Barrett provided the Board with an update on pending legal matters concerning Dr. Madden, Dr. Vuyuru, Dr. Fenton, Mr. Binder, and Dr. Amarasinghe.

No action was required by the Board.

Board of Health Professions

Dr. Farquhar informed the members that she has attended one meeting of the Board of Health Professions. She will provide the Board of Medicine with a list of the BHP members.

Podiatry Report

There was no report.

Chiropractic Report

There was no report.

Regulatory and Legislative Issues

Chart of Regulatory Actions

Ms. Yeatts provided an update on the regulatory activity of the Board of Medicine. She explained that Governor McDonnell has announced his Regulatory Reform Project which seeks to identify regulations that may no longer be applicable or that can be streamlined. An internal review will be done by DHP and Board staff to determine what can be done under the reform project. She advised that the Board will be conducting a review of the regulations for:

- Regulations Governing the Delegation to an Agency Subordinate
- Regulations Governing Respiratory Care
- Regulations Governing Physician Assistants
- Regulations Governing Occupational Therapy Assistants
- Regulations Governing Radiologic Technologists and Radiologic Technologists-Limited
- Regulations Governing Licensed Acupuncturists
- Regulations Governing Athletic Trainers
- Regulations Governing Licensed Midwives

The comment period for all of the above begins November 5, 2012 and ends on December 5, 2012. The comments and proposed changes will be reviewed by the Board in February 2013 as fast-track items.

Additionally, Wayne Reynolds, DO, the osteopathic member of the Board, will chair a public hearing on December 6th to take public comment on the proposed regulations to eliminate the 4th visit rule for supervisors and physician assistants.

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

Response to Petition for Rulemaking

Ms. Yeatts reviewed the Petition for Rule-Making received from David Weitzman, MD in which he asked the Board to “amend the requirements for licensure for persons who have been duly licensed in another state and have practiced a set number of years to gain unrestricted licensure by reciprocity or other such pathways.”

Ms. Yeatts advised that comments received from the Medical Society of Virginia and the Virginia Society of Plastic Surgeons were both in opposition to Dr. Weitzman’s proposed amendments.

During the discussion, Dr. Dalton stated that Virginia has one of the least stringent licensure requirements in the country, and that further reduction of the requirements would not be advisable. She noted that with the move towards national licensure, the issue of uniform requirements for all states will be addressed. Dr. Dalton then moved to reject Dr. Weitzman’s request for amendments. The motion was seconded and carried unanimously.

Virginia’s Licensed Pharmacist Workforce: 2011

Elizabeth Carter, Ph.D., Executive Director for the Board of Health Professions, provided a brief overview of the Virginia Licensed Pharmacists Workforce survey. Dr. Carter noted that the pharmacy licensees demonstrated an 80% participation rate with the survey process. She also mentioned that the survey of Nursing showed that the majority of registered nurses in Virginia have a bachelor’s degree of training. Dr. Carter said the information gathered through these reports will be shared with HRSA with the suggestion that HRSA consider using the same

methodology as it develops its own survey questions to address workforce issues across the nation.

DATA Demonstration of Physician Profile CME

Dr. Harp introduced Mike Gallini, DHP Systems Analyst, and reminded the Board that Mr. Gallini was there to present a draft proposal of an on-line continuing medical education form as requested by the members at the February 2012 Board meeting.

After Mr. Gallini's presentation, the members voiced concerns they had about the utility of the form. The Board briefly discussed the matter after which Dr. Bell moved to continue this effort as a work in progress. The Board unanimously agreed.

Grace Period for Licensure of Behavior Analysts and Assistant Behavior Analysts

The initial date that the Board of Medicine could issue licenses for Behavior Analysts and Assistant Behavior Analysts was September 19, 2012. Dr. Harp explained that it is customary to allow a reasonable amount of time after the initial licensing date for qualified applicants to apply for a license. In keeping with this practice, staff suggested a period of 12 months (September 19, 2013) before any allegations of unlicensed practice be brought at the time of licensure.

After a brief discussion, Dr. Ransone moved to approve the 12-month grace period. The motion was seconded and carried unanimously.

Albany Medical College Online Offering in Medical Ethics

Dr. Harp referred to correspondence from Albany Medical College which provided information about its new online course for physicians seeking remedial education in medical ethics, professionalism, and professional boundaries. Dr. Harp pointed out that this may be useful when the Board orders a licensee to take an ethics/professionalism course.

After discussion, Dr. Ransone moved to reject the online course noting that face-to-face is what is more beneficial in these types of cases. The motion was unanimously carried.

Recommendations from the Advisory Board on Radiologic Technology

Dr. Harp presented two recommendations from the Advisory Board on Radiologic Technology.

The first recommendation stemmed from a situation with an institution of higher learning with campuses in Richmond and Tidewater. The campuses put rad tech-limited coursework in place but did not manage to line up traineeships for its students as it had hoped. As a result of that situation and a miscommunication involving Board staff, the school proceeded to have the students perform their 10 examinations for licensure in the simulation lab, not on actual patients. At the October 3, 2012 meeting of the Advisory Board, the school presented its case and asked

that an exception be granted to those students who had already finished the program, and to those that are currently enrolled in the program. The school indicated that it would be closing the program after the current students completed their training. Dr. Harp reported that the Advisory Board took everything into consideration and after discussion moved to recommend to the Full Board “that students who have graduated from, or who are currently enrolled in the MOBXT Program at Fortis College in Richmond, or Norfolk, Virginia be allowed to perform simulated radiologic examinations and real patient examinations in satisfaction of the 10 required examinations for licensure.”

The Board had some discomfort with what had transpired. After taking into account the recommendation of the Advisory Board, Board counsel’s comments and the fact that this would be a one-time reprieve never to be repeated, Dr. Ransone moved to accept the recommendation of the Advisory. The vote was 12 in favor with one abstention.

The Board clearly stated that the regulations are to be interpreted that the 10 examinations requisite to licensure are to be done on actual patients, not simulations. Ms. Yeatts suggested that a guidance document be drafted to memorialize this interpretation.

The second recommendation from the Advisory Board were proposed changes to 54.1-2900 that would remove inconsistencies between two sections of the law and in the process would clarify the Board’s authority to license the multiple ARRT specializations within radiologic technology.

The proposed language changes to 54.1-2900 were:

“Practice of Radiologic Technology” be redefined to read “means the application of ~~x-rays~~ ionizing radiation for diagnostic and therapeutic purposes. Furthermore, the definition of “Radiologic technologist” shall be redefined to read “means an individual...who (i) performs ...or who is licensed to perform a comprehensive scope of diagnostic or therapeutic radiologic procedures employing ~~equipment which emits~~ ionizing radiation and (ii) is delegated or exercises responsibility for the operation of radiation-generating equipment, ...”

Dr. Bell moved to approve the new language for submission to DHP for the 2013 Session of the General Assembly. The motion was seconded and carried unanimously.

Licensing Report

Mr. Heaberlin informed the members that he had just completed a review of the application process for physicians. He found that it now takes approximately 11½ weeks from the time an application is received to the time that a license is issued. The Board voiced its concern over the length of processing time and discussed possibilities of how to reduce it, including eliminating unnecessary paperwork that could streamline the application process.

Dr. Harp advised that a temporary employee had recently been brought on board to assist with the physician desk, and until the Board gets clearance to hire a full-time staff person or make an internal shift, these are the processing times that the Board will most likely display.

Dr. Bassam noted that this is an important issue that impacts patient care. He went on to say that it is an apparent inconsistency to have 1.5 people processing these applications with over \$8 million dollars in the bank.

Dr. Bassam moved that Board staff put together a proposal of recommendations on how to improve the current process and increase the efficiency using the resources available to the Board. The motion was seconded, and the floor was opened for discussion.

Dr. Piness questioned why consideration has not been given to the establishment of an allied health board in light of all the allied professions continually being added to the Board of Medicine.

Dr. Dalton suggested that the Board think more strategically and politically as it looks at the licensing specialist/application ratio. She suggested the data analysis concerning staffing be presented to the Legislature for consideration.

The members collectively agreed that this issue should be addressed in the near future. The motion was restated, seconded and carried unanimously.

Mr. Heaberlin continued by reviewing the proposed changes to the online application for physicians. The Board accepted the updated application as presented with the exception of the revision of #3 (per Mr. Heretick), and question #4 (per Ms. Deschenes).

Discipline Report

Ms. Deschenes provided and briefly reviewed a handout detailing case statistics as of October 23, 2012.

She then informed the Board that representatives from the Lifeguard Program, previously PMSCO, met with Board staff to present their fully-tested and finalized assessment program. Ms. Deschenes noted that Lifeguard is on the Federation's list of approved providers for Post Licensure Assessment, and that we have gotten good reports from them in the past. She advised that Lifeguard is also working with UVA to see where they may be able to collaborate, particularly in the realm of disruptive behavior.

Ms. Deschenes then addressed the concern expressed by some Board members regarding the number of cases being dismissed at informal hearings. With a significant rate of dismissal, the question becomes whether such cases should have been scheduled in the first place. She suggested that a solution may be to have more than one Board member review a case before it is sent forward.

Dr. Bassam asked, "What exactly is the problem?"

Ms. Deschenes stated that Board members are more frequently asking staff at the start of informal conferences "why a case was sent forward".

Dr. Piness noted that when the Board President had the responsibility of reviewing the cases, she believed there were fewer cases being dismissed at informal. That approach seemed to work and perhaps should be reinstated.

Dr. Dalton commented that it is better to err of the side of caution than to chance patient harm.

After discussion, the Board determined that it was satisfied with the current process, and that staff did not need to make any adjustments to the way the cases were being handled.

Proposed 2013 Meeting Calendar

The Board accepted the proposed dates of the Full Board, Executive Committee and Legislative Committee as presented on the 2013 calendar. Board members were reminded to report conflicts as soon as they become aware of them.

Credentials Committee Recommendation

The Board received and reviewed the Credentials Committee Recommendation on the matter of Michael Thomas McMahon, DO, applicant for licensure.

After review, Dr. Ransone moved to accept the Credentials Committee recommendation as presented. The motion was seconded and carried.

FSMB Plaque Presentation

Mr. Heretick presented Gopinath Jadhav, MD with a plaque from the Federation of State Medical Boards for service on its Foundation Board. He asked the Board to join him in thanking Dr. Jadhav for serving with distinction beyond the boundaries of the Commonwealth.

Announcements

Staff reminded the Board members of their hearing assignments for the remainder of the day.

Adjournment: With no other business to conduct, the meeting adjourned at 12:45 p.m.

Next scheduled meeting: February 21, 2013

Valerie L. Hoffman, D.C.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary