

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

Thursday, June 20, 2013

Department of Health Professions

Henrico, 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
Barbara Allison-Bryan, MD
Randy Clements, DPM
Claudette Dalton, MD
Irina Farquhar, PhD
Robert Hickman, MD
William Hutchens, MD
Jane Maddux
Kevin O'Connor, MD
Jane Piness, MD
Kenneth Walker, MD

MEMBERS ABSENT: Kamlesh Dave, MD
Siobhan Dunnavant, MD
Stephen Heretick, JD
Michael Signer, PhD, JD

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
Joy Langford, Office Specialist
Arne Owens, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst

OTHERS PRESENT: Elizabeth Carter, PhD, Healthcare Workforce Data Center
Mike Jurgensen, MSV
Ben Sharpe, VADRS
Carl Ameringer, PhD, JD, Wilder Institute
W. Scott Johnson, JD, HDJN/MSV

EMERGENCY EGRESS PROCEDURES

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

APPROVAL OF THE FEBRUARY 21, 2013 MINUTES

Dr. Piness moved to accept the minutes of February 21, 2013. 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.

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Arne Owens, Chief Deputy, provided an update on the status of the National Governors Association project related to prescription drug abuse. He noted that a final draft should be completed by the first of September.

Elizabeth Carter, PhD presented a draft report on Virginia's physician workforce developed from a survey administered by the DHP Healthcare Workforce Data Center. She highlighted several areas of the report and asked the members for any feedback they might have to be forwarded by the end of the month.

Dr. Carter advised that the Healthcare Workforce Data Center had recently provided information regarding primary care physicians to the Richmond Times-Dispatch. Mr. Owens commented that the Associated Press appears to be working on a story about a potential decline in the number of primary care physicians.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Hoffman presented Dr. Dalton a certificate from the Federation of State Medical Boards that

acknowledged her service in FSMB's Maintenance of Licensure effort.

VICE-PRESIDENT'S REPORT

Dr. Mackler had no report.

SECRETARY-TREASURER'S REPORT

Dr. Reynolds acknowledged the good work of the staff in keeping the Board's expenses under control. He further stated that with a healthy surplus, the Board would be voting on a fee reduction for its licensees a little later on the agenda.

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 April 30, 2013 was \$8,560,662. Dr. Harp highlighted the fees spent on temporary employees, HPMP and medical experts.

Dr. Harp stated that the budget for 2015-2016 has been formulated. In it, the Board is requesting funding for two new licensing positions, for a retreat, and to cover additional Board members' attendance at the Annual Meeting of the Federation of State Medical Boards.

- Correspondence from FSMB regarding the Board Liaison Program

Dr. Harp announced that Mr. Heretick was our new liaison from FSMB.

- Letter to Senator Linda T. Puller, JCHC

Dr. Harp briefly reviewed the letter sent to Senator Puller and noted that the Board continues to meet its responsibility to the Joint Commission on Healthcare.

- Letter to David Johnson, FSMB

Dr. Harp reminded the Board of the decision to allow FSMB to take the responsibility for determining special test accommodations for USMLE 3.

- Letter to Greg Billings, C-Tel

Dr. Harp informed the Board that the Executive Committee met in April, and after discussion, concluded that the suggested language in C-Tel's document would require an amendment to the Code of Virginia by the General Assembly. Dr. Harp advised that Board staff will follow this issue as it continues to be in active discussion at the national level.

Ms. Deschenes pointed out that §54.1-3303 states that a prescription for a controlled substance may be issued only by a practitioner to persons with whom the practitioner has a bona fide practitioner-patient relationship and specifically has performed or had performed an appropriate examination of the patient either in person or by the use of instrumentation or diagnostic equipment.

Board members then had a brief discussion about contracted telemedicine services and whether a Virginia license was required for such activity. As an associated matter, the Board did opine that a member of a physician group could prescribe for a patient if a bona fide doctor-patient relationship had been established by one prescriber in the group.

- Prescription Monitoring Program (PMP) Update

Dr. Harp pointed out that the PMP will hit one million user requests for information this year.

Dr. Harp stated that 85% of the practitioners that are prolific prescribers are registered with the PMP, which is good. However, the number of pills written by the most conservative prescribers, many of whom are not users of the PMP, is still a very significant amount.

Mr. Owens advised that only 17% of those using the PMP said that they had altered their treatment plan for substance abuse patients. Mr. Owens also said that the General Assembly recently passed law that will allow local law enforcement access to the PMP.

In response to a Board member's inquiry as to what studies have been done on the demographics of drug abuse and drug deaths, Dr. Harp pointed out that Virginia physician Marti Wunsch had the NIH grant to study drug fatalities in Southwest Virginia. She reported the results of her review of 900 deaths to the medical community in 2007. To the best of Dr. Harp's recollection, he said the average description of a victim was male, mid-thirties, unemployed, with chronic pain, disability and substance abuse issues.

- Health Practitioners Monitoring Program Statistics

Dr. Harp noted the total number of Medicine participants in the program to be 110 with 73 MDs. This report was for informational purposes only. No action was required.

Dr. Harp announced that Dr. Penny Zeigler will be leaving the program; Dr. Silverman is actively recruiting for the medical director position.

- Board Briefs

Dr. Harp suggested that future board briefs be comprised of Board meeting minutes, updated disciplinary actions, and any topics of immediate interest. The briefs would be available three times a year.

The Board members unanimously agreed.

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. Deschenes stood in for Ms. Barrett and provided an update on the disciplinary matters before the courts.

No action was required by the Board.

Board of Health Professions

Dr. Farquhar had no report.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Hoffman had no report.

Joint Board of Nursing and Medicine

Dr. Hickman had no report.

Regulatory and Legislative Issues

- Chart of Regulatory Actions

Ms. Yeatts gave a brief overview of the status of regulations for the Board. She called attention to several including the emergency regulations for the Regulations that Govern the Practice of Physician Assistants and Qualifications for Fluoroscopy and pointed out that approval is still pending.

Dr. Dalton stated that the AMA Board of Trustees had recently issued a resolution that recommends direct physician supervision of PAs doing pain management with fluoroscopy.

Ms. Yeatts advised that the regulation for the elimination of the 4th visit rule has been approved. She stated that this information must now be captured in the practice agreement when submitted

to the Board for approval. Ms. Yeatts suggested that this be highlighted in the next Board Brief.

Ms. Yeatts reminded the Board that behavior analysts and assistant behavior analysts were granted licensure by emergency regulation. Those regulations are currently in effect and will need to be replaced in September. She suggested that the Executive Committee ask for a 6-month extension of the emergency regulations at its August meeting, just to be on the safe side.

Mr. Owens informed the Board that the Director's office met with Secretary Hazel and discussed the top ten items on DHP's list in hopes of moving the department's regulatory and legislative matters ahead.

- Regulatory Reform Project

Ms. Yeatts briefly reviewed the Notice of Periodic Review for Nurse Practitioner Regulations as part of the Governor's Regulatory Reform Project.

After a very brief discussion, Dr. Mackler moved to accept the recommendation of the Committee of the Joint Boards of Nursing and Medicine to make no changes to Chapters 30 and 40 at this time. The motion was seconded and carried unanimously.

- Action on Guidance Document

Ms. Yeatts advised that Guidance Document 90-11 was reviewed by the Committee of the Joint Boards of Nursing and Medicine, and only minor revisions are being recommended.

Dr. Mackler moved to adopt the proposed revisions to Guidance Document 90-11. The motion was seconded and carried unanimously.

- Recommendation for Legislative Proposals

Ms. Yeatts advised that the first legislative proposal was from the Advisory Board on Respiratory Care. The Advisory requested that the designation "licensed respiratory care practitioner" be changed to "licensed respiratory therapist" consistent with the national trend.

The second proposal seeks to further clarify the grounds for unprofessional conduct in §54.1-2915, specifically that incompetence to practice with reasonable skill and safety may be a violation of law.

After discussion, Dr. Dalton moved that both legislative proposals be sent to the DHP Director for consideration of inclusion in DHP's legislative packet for the 2014 General Assembly.

- Regulatory Action: Adoption of Amended Regulations for a Fee Reduction for all Professions

Ms. Yeatts referred to the letter from Dr. Reynolds-Cane regarding the financial analysis of the

Board and the recommendation of a one-time fee reduction applicable to each profession's next renewal cycle in either 2014 or 2015. Ms. Yeatts stated that the intent is to reduce fees consistent with the law, but not to the point that the Board will have to increase fees again in the near future.

Dr. Reynolds moved to accept the recommendation. The motion was seconded and carried unanimously.

- Guidance Documents – Licensed Midwives

Ms. Yeatts advised that the guidance documents provide updated code cites, websites, and contact information with the Board of Health to facilitate compliance with law and regulations by licensed midwives.

Dr. Mackler moved to adopt the guidance documents for licensed midwives as presented. The motion was seconded and carried unanimously.

Licensing Report

Mr. Heaberlin reported that the Board's customer satisfaction rating has increased since his last report. And, with the help of two temporary employees, the medicine and surgery licensing process was running more smoothly and quickly.

Mr. Heaberlin also reported that he participated in an FSMB webinar that discussed the limit of six attempts to pass each step of the USMLE.

Discipline Report

Ms. Deschenes reported that the Board's numbers are holding steady insofar as cases received and those going forward. She advised that there are 115 cases currently at APD, but the Board is currently caught up and has no notices to issue at the moment. She related that half of APD's medicine adjudication analysts are out for various reasons. APD is working on filling all vacancies.

Dr. Harp congratulated Dr. Matusiak on her phenomenal 7-9 day time for probable cause review. He said it is in large part due to her efforts that the Board has the good disciplinary stats it does. Ms. Deschenes also thanked all the Board members for their assistance, especially Dr. Hickman, Dr. Dalton, and Dr. Mackler for the extra days they give to case review.

Nominating Committee Report

Dr. Piness, Chair of the Nominating Committee, presented the slate of officers:

Stuart Mackler, MD – President

Wayne Reynolds, DO – Vice-President

Kenneth Walker, MD – Secretary/Treasurer.

With no other nominations from the floor, Dr. Allison-Bryan moved to accept the slate as presented. The motion was seconded and carried unanimously.

Recognition of Board members whose terms are expiring

Dr. Hoffman presented Dr. Dalton with a plaque commemorating her service with the Board from 2005-2013. Dr. Dalton stated that it has been a privilege to work with all of her colleagues on the Board.

Dr. Mackler presented Dr. Hoffman with a plaque commemorating her service with the Board from 2005-2013 and remarked that it has been a privilege and honor to serve with her. Dr. Hoffman thanked everyone and said that she is proud to say that “after eight years on the Board, she is proud to be a DC and never written a prescription in her life.”

FSMB Annual Meeting Update

Dr. Hoffman, Dr. Dalton and Ms. Deschenes gave brief accounts of their attendance at FSMB’s Annual Meeting held in Boston two days after the marathon bombing. They stated that in spite of the distractions and extenuating circumstances, all went well.

Dr. Reynolds announced that he was appointed to the Editorial Board of the Federation of State Medical Boards.

2014 Proposed Meeting Dates

Dr. Harp noted that the schedule for 2014 managed to avoid a conflict with MSV’s Annual Meeting.

Dr. Mackler moved to approve the schedule as presented. The motion was seconded and carried unanimously.

Next Meeting Date

With the possibility of more than one member missing the scheduled October 24th meeting, Dr. Dalton moved to change it to October 17-19th. The motion was seconded and carried with one opposed. Staff will confirm room availability for this move.

Credentials Committee Recommendations

The Board reviewed the Credentials Committee recommendations for two applicants along with the applicants’ petitions to withdraw their applications for licensure.

Dr. Mackler moved to accept both withdrawal requests. The motion was seconded and carried unanimously.

Announcements

Dr. Mackler offered his personal travel reimbursement tracking form to the Board members to use if needed.

Dr. Harp mentioned that the Food and Drug Administration has hired the Brookings Institution to study the best ways to communicate the law prohibiting the purchase and use of unapproved medications to physicians/prescribers. Board staff has been on a call with researcher Joel Wu of Brookings; a meeting will be called in Washington, DC sometime in the near future.

Adjournment: With no other business to conduct, the meeting adjourned at 10:59 a.m.

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

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary