

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

Thursday, October 24, 2013

Department of Health Professions

Henrico, VA

PUBLIC HEARINGS

Dr. Mackler called the public meeting to order at 8:51 a.m. and announced that comments would be taken on the proposed regulations 18VAC85-150-10 – Regulations Governing the Practice of Behavior Analysis.

Bethany Marcus, Ph.D. expressed her support for the regulations and also her concern about the oversight and supervision of assistants and technicians, billing practices, and composition of an advisory board. Dr. Marcus provided the Board with her written comments for distribution.

Michael Chiglinsky, Ph.D. spoke on behalf of the Virginia Academy of Clinical Psychologists and advised that they fully endorse the comments and concerns addressed by Dr. Marcus, and in addition requests that consideration be given to setting a number on how many assistants can be supervised at one time, setting a minimum of face-to-face time with each patient, and setting on-site requirements during delivery of professional services. Dr. Chiglinsky also provided the Board with his written comments for distribution.

James Monroe, Ph.D. addressed the members and expressed his concern about the proposed regulations. Dr. Monroe, during his comments, remarked that the BACB stated that the practice of behavior analysis does not appear to appropriately fall within the mandates of the Board of Medicine and that perhaps this charge should fall under the Department of Education. Dr. Monroe provided the Board with his written comments for distribution.

Dr. Mackler stated that the comment period closes on December 6, 2013 so any additional written comments should be forwarded to Dr. Harp or posted on the Virginia Regulatory Townhall.

The public hearing on regulations was concluded at 9:15 a.m.

CALL TO ORDER: Dr. Mackler called the meeting to order at 9:16 a.m.

ROLL CALL

MEMBERS PRESENT: Stuart Mackler, MD, President
Wayne Reynolds, DO, Vice-President
Kenneth Walker, MD, Secretary-Treasurer
Syed Ali, MD
Randy Clements, DPM

Siobhan Dunnavant, MD
Irina Farquhar, PhD
Deborah DeMoss Fonseca
David Giammittorio, MD
Stephen Heretick, JD
Robert Hickman, MD
Valerie Hoffman, DC
William Hutchens, MD

MEMBERS ABSENT: Barbara Allison-Bryan, MD
Lori Conklin, MD
Kamlesh Dave, MD
Jane Maddux

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
Pam Smith, Licensing Specialist
Dianne Reynolds-Cane, MD, DHP Director
Arne Owens, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst

OTHERS PRESENT: Tyler Cox, MSV
Jerry Canaan, HDJN
Bethany Marcus, Ph.D.
Michael Chiglinksy, Ph.D., VACP
Lindsay Walton, VOTA
Bo Kenney, VACP
James Pickrel, VPhA

EMERGENCY EGRESS PROCEDURES

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

APPROVAL OF THE JUNE 20, 2013 MINUTES

Dr. O'Conner moved to accept the minutes of June 20, 2013. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

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

INTRODUCTION OF NEW BOARD MEMBERS

The Board acknowledged and welcomed new board members Syed Ali, MD, Deborah DeMoss Fonseca, and David Giammittorio, MD.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Mackler then acknowledged and welcomed the guests that were present.

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Dr. Cane advised that the DHP submitted a legislative plan to the Governor's Office for inclusion in the 2014 General Assembly packet and is waiting on a determination as to whether or not it will be introduced in the 2014 session. Dr. Cane also informed the members that DHP was one of six entities chosen by the National Governor's Association and awarded funding to develop a licensure plan for military families transitioning into civilian life. She noted that this plan is currently geared towards the LPN, EMT and PTA professions. Dr. Cane also advised that she will be addressing the Senate about Medicare mapping in the next couple of weeks.

PLAQUE PRESENTATIONS

After Dr. Cane's report Mr. Heretick presented her a service plaque as a token of thanks from the Board of Medicine expressing appreciation for her service to the Commonwealth. Dr. Cane thanked everyone for their thoughtfulness and consideration for the presentation.

Mr. Heretick also acknowledged the service plaque of appreciation to Howard Casway, Sr. Attorney General for his 30 plus year of exceptional service with the Attorney General's Office (?).

Dr. Hoffman presented Dr. Mackler a gavel plaque commemorating his current position as President of the Virginia Board of Medicine.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Mackler had no report.

VICE-PRESIDENT'S REPORT

Dr. Reynolds reported that USMLE has determined that the testing cycle will be limited to six attempts and that they are committed to working on security issues at non-American testing sites. Dr. Reynolds advised that a formal report will follow.

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 solvent with a cash balance of 6,904,251 as of September 30, 2013. Dr. Harp also noted that there will be a 14% decrease in renewal fees across the board for one renewal cycle beginning in January 2014.

- 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.

- New Law allowing electronic meetings under FOIA

Dr. Harp informed the Board that according to **§202.3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report.** when a physical quorum was not able to be established, then an electronic meeting could be conducted, however, members may need to open their homes to the public and the meeting would need to be audio taped.

Ms. Yeatts added that the Full Board would need to have a quorum physically in attendance before including anyone added electronically; however, advisory boards can hold an electronic meeting provided all the other conditions are met.

- FY2014 First Quarter Key Performance Measures

For the benefit of the new board members, Dr. Harp explained the components of the key performance measures highlighting the rise and fall of the Board's case closure numbers. Dr. Harp acknowledged the hard work of Dr. Matusiak and the board members for their time and

effort on probable cause review which has put the board back to 100% [REDACTED] ?

- Update on the Virginia Prescription Monitoring Program

Dr. Harp briefly reviewed the statistics provided by Ralph Orr, Director, Prescription Monitoring Program, and noted that they expect to process greater than 1.2 million requests by the end of the year. Dr. Harp also pointed out that the program added over 3000 registered users at the beginning of 2013 due in part by the inclusion of Tennessee pharmacists. Dr. Harp stated the Mr. Orr is working diligently to partner with and make us more interactive with other states.

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

- Trust for America's Health (TFAH) article on Prescription Drug Abuse

Dr. Harp pointed out that prescription drug abuse has become a top public health concern of the TFAH, and that according to the report prescription drug related deaths now outnumber illicit drug deaths. Dr. Harp also noted that in a state-by-state drug overdose mortality ranking, Virginia ranked 48th in overdose fatalities.

- Medicaid Workforce Maps

HR3077 that says that if you are a medicare provd you can prov services anywhere without rgard to licensure.

????

- Consensus Principles for an Interstate Compact for Medical Licensure

Dr. Harp advised that Congress is currently looking at for an avenue to facility telemedicine across state lines but have not necessarily included the state boards of medicine or taken into account their individual laws and regulations. Dr. Harp stated that the Federation has been proactive in regards to telemedicine and license portability and is offering a consensus for the development of an interstate compact license. FSMB's suggestions would leave the regulating authority with the boards rather than someone else's hand.

Mr. Heretick advised that the concept to use an interstate compact license is the oldest form of government we have. He said that each state would be allowed to judge for itself whether or not to join with another state; one size does not fit all. He also said that the physician would be subject to disciplinary action from the states in which the patient resides. Mr. Heretick informed the Board that FSMB asked for and got a meeting with Senator Biscotti with the House of Means in the middle of budget negotiations to discuss this model. Mr. Heretick noted that this issue is evolving at a rapid rate.

The chair called for a break and the meeting reconvened at 10:17 a.m.

- Board Member/Staff Participation at FSMB

Dr. Harp reviewed the contribution of board members and staff to the Federation of State Medical Boards. Dr. Harp stated that we will begin sending out notices for upcoming webinars.

- FSMB Call for Elected Positions

Dr. Harp encouraged anyone interested in serving on the FSMB's Board of Directors or Nominating Board to do so. He informed the Board member of their fellowship status as a sitting member of the Virginia Board of Medicine and 3 years post.

- FSMB Call for Appointed Positions

Dr. Harp suggested for those not interested in an elected position to consider serving on one of FSMB's committees. He noted that Dr. Reynolds is currently active on the bylaws, audit, and editorial committees. Dr. Reynolds added that it is a great opportunity without an overload of meeting commitments and it keeps Virginia visible at the national level.

- Letter of Comment on Maintenance of Licensure from Jerome M. Parsons, MD

Dr. Harp acknowledged correspondence from Dr. Parsons in which he asks how the Maintenance of Licensure pilot will improve the quality of care from a practitioner. Dr. Harp reminded the Board that they had agreed to help out with the pilot by integrating an assessment into the renewal process, taking a readiness survey and reviewing outreach material prepared for the public, etc.

Committee and Advisory Board Reports

Dr. Harp reviewed the updated Committee assignments and asked that any questions or concerns be addressed with him or Dr. Mackler.

Ms. Barrett asked that minor changes be made to the August 2, 2013 draft Executive Committee minutes.

Dr. Reynolds moved to accept the committee reports en bloc with the suggested change to the Executive Committee meeting minutes. The motion was seconded and carried unanimously.

Other Reports

Assistant Attorney General

Ms. Barrett provided an update on the disciplinary matters on Dr. Vuyyuru, Dr. Petrie, and Dr.

Clowdis.

No action was required by the Board.

Board of Health Professions

Dr. Farquhar had no report.

Podiatry Report

Dr. Clements advised that the American Board of Lower Extremity Surgery (ABLES) is approaching the General Assembly and requesting to have their certification added to the list of certifying bodies for podiatrists. Dr. Clements noted that ABLES certification process follow the other surgical boards if the included feels they are stringent enough to be respected.

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 provided an update on the status of pending regulations. She advised that we are still waiting approval on a few; however, many have been approved including the Regulations Governing the Practice of Midwifery - Disclosure requirements for high-risk pregnancies. Ms. Yeatts stated that what remains to be done is the development of a joint statement that represents both the medicine and midwifery communities. Ms. Yeatts then advised that the proposed draft document will be presented at the Executive Committee on December 27, 2013 for adoption.

Ms. Yeatts informed the Board that the emergency regulations for Behavior Analysis was extended until March 20, 2014, and because of regulatory procedure, with the comment period closing on December 6th, the meeting of the Executive Committee was moved to the 27th.

Ms. Yeatts also pointed out that the Regulations Governing the Practice of Polysomnographic Technology was approved and without an established advisory board, once comments have been received, the ad hoc committee may need to reconvene to review the comments received after which, the proposed regulations will also be presented to the Executive Committee in December.

- **Response to Petition for Rulemaking**

Ms. Yeatts acknowledged the Petition for Rulemaking received from Melody Cartwright in which she requests consideration to amend requirements for chiropractors to use digital x-rays when treating and diagnosing curvature of the spine. Ms. Yeatts pointed out that the comment period was open from July 29-August 28, 2013 and there were no comments received.

After discussion the Board agreed to reject the request for amendments based the fact that there is no evidence to support an improved outcome from using digital x-rays over film x-rays, that there is no evidence that the recommendation has a bearing on the standards of care, and that the regulations should not be written disease specific. Dr. Hickman officially offered the motion and it was seconded and carried unanimously.

- Adoption of Regulations for Collaborative Practice Agreements

Ms. Yeatts informed the Board that the proposed regulations were jointly promulgated by the Boards of Pharmacy and Medicine on August 20, 2013. Ms. Yeatts stated that the recommended amendments to 18VAC110-40-10 et seq. are to conform regulatory provisions to the changes in statute.

Dr. Hoffman moved to adopt the amendments to 18VAC110-140-10 et seq., Regulations Governing Collaborative Practice Agreements by an action exempt from the provisions of the Administrative Process Act. The motion was second and carried unanimously.

- Virginia Board of Medicine and Accommodations for USMLE Testing

Dr. Harp presented the Executive Committee's recommendation from their meeting on April 5, 2013 to allow testing accommodations for candidates for the USMLE Step exams be delegated to the Federation of State Medical Board.

After a brief discussion, Dr. Reynolds moved to accept the recommendation of the Executive Committee as presented. The motion was seconded and carried.

- Consideration of Proposed Guidance Document

Dr. Harp reminded the Board that at the February 21, 2013 meeting, they voted to accept USMLE's new policy that attempts at each of the four Step Exams be limited to six with an allowance for one additional attempt if approved by an interested board of medicine. Dr. Harp then presented the proposed guidance document that includes the Board's policy on not being authorized to approve any additional attempts past six. Dr. Hoffman moved to accept the guidance document as presented. The motion was seconded and carried unanimously.

- Updated FSMB Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain

Dr. Harp presented the updated FSMB Model Policy and asked the Board to consider adoption or they could refer to the Legislative Committee for review and recommendation. Dr. Harp added that there are two other model policies _____ on social media and telemedicine.

Dr. Hoffman moved to accept the updated policy as new guidance document 85-24, that it be published on the Board's website, and its existence be communicated to the public. The motion was seconded.

After further discussion, Dr. Dunnivant asked about partnering with MSV to have this information communicated to the licensees. In addition, the Board will look at how to ensure the intent to use this Policy as a standard of care can be accurately conveyed.

After discussion, the motion was accepted unanimously.

Licensing Report

Mr. Heaberlin provided the license count as of October 16th and reviewed the reviewed licensing statistics highlighting the number of license issued by the board between the dates of October 2012 to September 2013.

Mr. Heaberlin then presented the data gathered as a result of the Executive Committee's request to capture the trend of late renewals for the purpose of determining if further action is required.

After discussion, the Board decided to take no action.

Mr. Heaberlin informed the Board that the grace period for licensing behavior analysts and assistant behavior analysts expired September 18, 2013, so anyone applying now that has been practicing in Virginia without a license will be issued a consent order for unlicensed practice.

Mr. Heaberlin reported that the Federation of State Medical Boards is requesting approval from the Board to begin accepting FCVS packets for physician assistants. He reminded the members that the Board currently accepts these packets for applicants of medicine and surgery.

After discussion, Dr. Hickman moved to accept, but not require, the use of FCVS packets for physician assistants. The motion was seconded and carried unanimously.

Discipline Report

Ms. Deschenes provided an overview of the case review process and the case statistics.

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

Announcements

Dr. Dunnivant requested that the Board members be provided with a compiled document of all the members bios so that they can get to know each other's background. Dr. Harp suggested this

be a project for the agency's communication officer, Diane Powers. Dr. Harp will reach out to Ms. Powers with this request.

Credentials Committee Recommendations

Mr. Heaberlin provided a copy of the credentials committee's recommendation for read- review. After review, Dr. Hutchens moved to accept the recommendation as presented. The motion was seconded. The final vote was 8 to five to accept the recommendation as presented.

Adjournment: With no other business to conduct, the meeting adjourned at 11:50 a.m.

Stuart Mackler, M.D.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary