---DRAFT UNAPPROVED---

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

October 16, 2014 | Department of Health Professions | Henrico, VA

CALL TO ORDER: Dr. Mackler called the meeting of the Board to order at 8:39 A.M.

ROLL CALL: Ms. Opher called roll. A quorum was established.

MEMBERS PRESENT:
Wayne Reynolds, DO, President
Kenneth Walker, MD, Vice-President
Barbara Allison-Bryan, MD, Secretary-Treasurer
Syed Ali, MD
Randy Clements, DPM
Lori Conklin, MD
Siobhan Dunnavant, MD
Deborah DeMoss Fonseca
Frazier Frantz, MD
David Giammittorio, MD
The Honorable Jasmine Gore
Maxine Lee, MD
Stuart Mackler, MD
Kevin O'Connor, MD
Ray Tuck, DC

MEMBERS ABSENT:
Kamlesh Dave, MD
Irina Farquhar, PhD
Lorri Kleine, JD

STAFF PRESENT:
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Alan Heaberlin, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Lynn Taylor, Discipline Support Specialist
Jaime Hoyle, JD, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT:
Mike Jurgensen, MSV
Gerald Canaan, Esq.
Michele Satterlund, Esq.

EMERGENCY EGRESS PROCEDURES

Dr. Walker read the emergency egress procedures for Conference Room 2. Ms. Deschenes advised that the meeting may be temporarily disrupted for an earthquake drill.

APPROVAL OF THE JUNE 19, 2014 MINUTES

Dr. Mackler moved to accept the minutes of June 19, 2014. The motion was seconded and carried unanimously.

APPROVAL OF THE AGENDA

Dr. Dunnavant moved to accept the agenda as presented. The motion was seconded and carried unanimously.

INTRODUCTION OF NEW BOARD MEMBERS

Dr. Reynolds acknowledged new board members Maxine Lee, MD – anesthesiologist from Roanoke, and The Honorable Jasmine Gore, JD – Vice-Mayor for City of Hopewell.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Reynolds acknowledged and welcomed the guests that were present.

Mike Jurgensen with MSV spoke in support of the proposed changes to the office based surgery regulations.

Michelle Satterlund spoke as a representative for Teladoc - a participant on the Ad Hoc on Telemedicine - and offered to be a resource when the Telemedicine Guidance Document came up for discussion.

NEW BUSINESS

DHP DIRECTOR'S REPORT

(was this Jaime Hoyle or David Brown? I thought it was Jaime Hoyle) Jaime Hoyle, DHP Chief

Deputy Director informed the Board of the establishment of the Governor's Task Force on Prescription Drug and Heroin Abuse. Ms. Hoyle advised that the Task Force will offer recommendations on education, treatment, data and monitoring, drug storage and disposal, and enforcement. She stated that members are still being identified, and although there will not be a representative from the Board of Medicine, there will be medical representatives around the table.

Ms. Hoyle advised that JCHC requested the agency to look at the advisability of establishing a midlevel provider's license (e.g., for those physicians who are unable to qualify for licensure in the state as a medical doctor) and DHP hosted a Mid-Level Provider meeting in late September. After a lively discussion, it was determined that Virginia is not ready to establish such a license category, but is willing to readdress the issue again in the future. It was noted that at this time Missouri is the only state currently licensing this category of mid-level providers.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Reynolds announced that he participated on FSMB's Editorial Committee and State Board Advisory Panel to USMLE. He noted that FSMB is looking for articles on topics of interest to boards nationally, and that USMLE's report will be released soon. Dr. Reynolds also encouraged anyone interested in being more involved with FSMB to run for a board position.

Dr. Mackler announced his participation on the Education Committee. He advised that the Committee has developed the 2015 agenda and that the topics are very interesting.

VICE-PRESIDENT'S REPORT

No report.

SECRETARY-TREASURER'S REPORT

No report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Ms. Deschenes reviewed the revenue and expenditures report. The Board's cash on hand as of August 31, 2014 was $9.87 million. Ms. Deschenes drew attention to the expenditures for enforcement and administrative proceedings, and also advised that due to the centralization of our human resource services to the Department of Human Resource Management, allocated fees

for that expenditure will decrease. This change should prove to be a cost savings to the Board and agency as a whole.

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

- Media Relations Log

Ms. Deschenes briefly reviewed the 2013 Media Relations Log and pointed out that the Board of Medicine and Board of Nursing were the largest users of this service and the requests and inquiries run the gamut.

Ms. Deschenes reminded the members that should they be contacted by the media, they are to refrain from commenting and should refer the individual to the Board.

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

- Health Practitioners' Monitoring Program Statistics

Ms. Deschenes noted that the Board of Medicine and Nursing have the majority of participants in the program. The current total number of Medicine participants in the program is 109.

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

- AG Hours Report

Ms. Deschenes stated that over the last two years, the number of hours that the Attorney General's Office spends on Board of Medicine business has increased 27%; however, she anticipates an significant jump next year due to the Board's current involvement with an anti-trust case.

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

- Federation of State Medical Boards Report

Ms. Deschenes noted the participation activity of board members and staff with FSMB.

Ms. Deschenes advised that Dr. Brown is supportive of Virginia's representation on the national level and suggested that anyone interested in attending future FSMB meetings should communicate with staff.

COMMITTEE AND ADVISORY BOARD REPORTS

Ad Hoc on Telemedicine

Dr. O'Connor thanked everyone for their participation on the committee. He explained that one of the constraints faced by the Committee was how to define telemedicine, and he emphasized that the purpose of the guidance document is to ensure that telemedicine is practiced in a manner that is safe or safer than traditional face-to-face medicine.

Dr. O'Connor said that the guidance document was developed by using the Ad Hoc Committee's input and FSMB's document as a template. He asked that the proposed guidance document be reviewed by Board members and the public and any comments sent to board staff.

Ms. Deschenes advised that the mistaken impression throughout the community is that telemedicine is not allowed in the Commonwealth; however, it has been alive and well practiced in Virginia for many years, and the guidance document will offer clarification on what is acceptable telemedicine practice.

Ms. Deschenes said that the proposed guidance document along with any comments and suggested revisions will be presented to the Executive Committee on December 5th and if adopted, will be posted on the Board's webpage.

Ms. Yeatts agreed that the proposed document is well done and clearly states what is currently encompassed in the law; however, there may be a few amendments needed to strengthen some of the statements.

Ms. Yeatts stated that if the Board wanted to put forth a legislative recommendation, it would not go in until 2016, but that would allow sufficient time to carefully examine the wording and identify any unintended consequences.

Dr. Dunnavant moved that legislation be considered for the 2016 General Assembly session. The motion seconded and carried unanimously.

Committee Appointments

Dr. Reynolds reviewed the updated appointment list. Dr. Mackler moved to approve the Committee appointments and minutes en bloc. Dr. Dunnavant requested that minutes of the Legislative Committee meeting be extracted for discussion. The motion was seconded and carried unanimously.

Legislative Committee Minutes – FSMB Interstate Medical Licensure Compact

After some discussion, the Board came to agree that the intent of the Interstate Medical Licensure Compact was to streamline the licensing process of an individual who is board certified, has had 5 years of practice and no disciplinary actions.

Ms. Yeatts pointed out that there is no final compact that Virginia can sign onto and that once there is, it would have to be adopted exactly as written and then placed into Virginia's law. As she sees it, the biggest problem is that the document defines the physician as someone who is

"board certified". Ms Yeatts noted that it is different from the nurse license compact in that theirs is a multi-state license privilege, and once granted, the licensee may practice in any other state that has entered into that compact agreement. Ms. Yeatts advised that until the FSMB document exists, it's premature for the Board to make any recommendations. Ms. Yeatts then suggested that license by endorsement be considered for streamlining the Board's current licensing process.

Dr. Dunnavant suggested that Mr. Steve Heretick be invited to speak at the 2015 February Board meeting to discuss this topic, and also that board counsel review the current statute regarding licensure by endorsement.

The President called for a break at 9:59 a.m. The meeting reconvened at 10:15 a.m.

Dr. O'Connor moved to accept the Legislative Committee meeting minutes as presented. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

For the benefit of the new board members, Ms. Barrett introduced herself and provided an overview of her position and what her responsibilities were to the Board.

Ms. Barrett then provided an update on the four outstanding cases currently in progress against the Board and certain board members. She stated that currently there are four attorneys in the AG's office continuously working on the Board's cases.

Board of Health Professions

Dr. Frantz did not have a report.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck announced that he attended the annual meeting of the Federation of Chiropractic Licensing Board (FCLB), and that they have developed an ethics test to address potential boundary issues.

Committee of the Joint Boards of Nursing and Medicine

Dr. Mackler advised he attended the Joint Boards' meeting; however, there were no business items that directly affected the Board.

Dr. Reynolds moved to accept the reports as presented. The motion was seconded and carried unanimously.

REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of pending Board of Medicine regulations. Dr. Jennifer Lee, Deputy Secretary of Health and Human Resources and former member of the Board of Medicine, is one of DHP's contacts in the Secretary's office regarding regulations.

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

- Response to Petition – Carol Hartigan

Ms. Yeatts advised that on October 8th, the Joint Board of Nursing and Medicine recommended adoption of an amendment to 18VAC90-30-90 by Fast-track action. Ms. Hartigan's petition requests the boards to add the American Association of Critical-Care Nurses (AACN) Certification Corporation to the list of board-accepted certification organizations.

The Board members were all in favor of passing this amendment.

- Response to Petition for Rule-Making – MSV

Ms. Yeatts provided the background on the proposal from the Medical Society of Virginia and advised that this item was previously discussed at the September 19th Legislative Committee meeting.

Ms. Yeatts advised that two comments were received during the comment period; one in support of the proposed changes, and one opposed with a proposed amendment.

Ms. Yeatts informed the Board that they may accept the request to consider amendments and initiate rulemaking by adoption of a Notice of Intended Regulatory Action or reject the petitioner's request and state reasons for denying the petition.

Dr. Mackler moved to reject the petition as presented. No second. The motion died.

The floor opened for discussion.

Dr. Dunnavant stated that overall the document was acceptable as presented; however, she did not agree with the establishment of a unique informed consent process for a particular procedure. Dr. Dunnavant moved to accept the petition with an amendment of striking proposed 18VAC85-20-350 B & C.

Mike Jurgensen informed the Board that out of concern for adverse consequences associated

with office-based surgeries, it was thought that regulatory guidelines may address standard of care issues. The Board of Medicine established a workgroup, but was not able to come to a resolution, so MSV appointed their own workgroup, with many of the same participants, (including Dr. Pat Clougherty, former Board of Medicine member and anesthesiologist) and continued the process to work out a compromise between the two specialties with respect to what regulatory approaches might be reasonable. The original draft of this document was discussed with Dr. Harp and Ms. Yeatts, and revisions were made based on their recommendations.

Mr. Jurgensen stated that in respect to informed consent, the opinions of the workgroup ran the scale, so the final product is an attempt to meet those concerns and also provide transparency to the patient.

After a lengthy discussion, Dr. Dunnavant restated her motion to accept the petition with the amendment of striking proposed 18VAC85-20-350 B & C. Dr. O'Connor seconded. After additional discussion, Dr. Walker called the question. The vote was 4 to 11; the motion failed.

Dr. Frantz moved to accept the petition and initiate rulemaking to issue a NOIRA. The motion was seconded. The vote was 11 to 4; the motion carried.

- Ad Hoc on Compounding

Dr. Ali advised that over the summer, the Board of Pharmacy led a compounding workgroup, initiated by the General Assembly, who was tasked to develop regulations on office compounding that was compliant with USPS. He stated that office-based compounding will be heavily restricted by the federal government, and that the states will be expected to keep in line with those requirements.

Dr. Ali noted that currently there are several differences between the Board of Medicine's MDR regulations and USPS' with the most notable being the definition of what compounding is and the timeline for destruction.

After discussion, Dr. O'Connor moved to form an ad hoc committee to look at the issue. The motion was seconded and carried unanimously. Dr. Ali and Dr. Lee both agreed to serve on the ad hoc committee.

Telemedicine Pilot Program

Ms. Deschenes advised that the information was provided only to make the Board aware of its existence.

LICENSING REPORT

Mr. Heaberlin provided a licensee count for the past two fiscal years and advised that a recent report showed 14,000 plus renewals in the last 6 months. Dr. O'Connor asked that the members be provided a medical man power report to get truer numbers, reflecting the actual number of licensees who work and reside in Virginia.

DISCIPLINE REPORT

Ms. Deschenes advised that the discipline numbers have not changed much since last year. Additionally, she noted that board staff is fielding many inquiries regarding telemedicine and the Ebola virus. She noted that the Department of Health is taking the lead on the Ebola issue.

REMINDERS PAGE

Travel vouchers for today's meeting should be submitted no later than November 17, 2014.

ANNOUNCEMENTS

Dr. Reynolds advised that the updated Adjudication process manual outlining the Board's process in case adjudication was being provided for informational purposes only.

SUMMARY SUSPENSION PROCEEDINGS

Pursuant to Section 54.1-2408.1 of the Code of Virginia, a quorum of the Virginia Board of Medicine met to receive and act upon information indicating that the following practitioners may have violated certain laws and regulations relating to the practice of medicine in the Commonwealth of Virginia. Pursuant to its authority under Section 54.1-2408.1 of the Code, the Board concluded that a substantial danger to the public health or safety warrants suspension of the license to practice medicine and surgery in the Commonwealth of Virginia for the following practitioners:

Wayne Halbleib presented case on K. Smith, RCP. Dr. Frantz moved to summarily suspend. Dr. Conklin seconded. The motion carried unanimously

Corrie Wolfe and Julia Bennett presented case on J. Smith, MD. Dr. Mackler moved to suspend. Dr. Conklin seconded. The motion carried unanimously.

James Schliessmann presented the case on N. Olibrice, MD. Dr. Mackler moved to suspend. Dr. Frantz seconded. The motion carried unanimously.

Ms. Deschenes advised that the McNamara hearing had been continued.

Adjournment: With no other business to conduct, the meeting adjourned at 11:42 a.m.

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Wayne J. Reynolds, DO
President, Chair

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Jennifer L. Deschenes, JD
Sr. Deputy Executive Director - Discipline

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Colanthia M. Opher
Recording Secretary