

VIRGINIA BOARD OF MEDICINE MINUTES

June 25, 2009

Department of Health Professions

Richmond, VA

- CALL TO ORDER:** The meeting of the Board convened at 8:49 a.m.
- MEMBERS PRESENT:** Jane Piness, MD, Vice-President
Valerie Hoffman, DC, Secretary/Treasurer
Clara Adams-Ender, RN, MSN, USA Retired
Ann T. Burks, JD
Malcolm Cothran, MD
Claudette Dalton, MD
William Epstein, MD
Gopinath Jadhav, MD
Stuart Mackler, MD
Juan Montero, MD
Karen Ransone, MD
Wayne Reynolds, DO
- MEMBERS ABSENT:** Stephen Heretick, JD, President
Sandra Anderson Bell, MD
Jennifer Lee, MD
Roderick Mathews, JD
Ellen Shapiro, DPM
- STAFF PRESENT:** William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Ola Powers, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Amy Marschean, Assistant Attorney General
Sandra Ryals, Director, Department of Health Professions
Emily Wingfield, Deputy Director, Department of Health Professions
Elaine Yeatts, DHP Senior Policy Analyst
- OTHERS PRESENT:** Jerry Canaan, HDJN
Zane Reasoner, VAPA
Tyler Cox, HDJN
Marcia Lammando, PMSCO Healthcare Consulting
David Hess, PMSCO Healthcare Consulting

EMERGENCY EGRESS PROCEDURES

Dr. Hoffman read the emergency egress procedures.

After roll call, a quorum could not be declared so the Board proceeded with non-voting business. Shortly thereafter, additional board members arrived and a quorum was declared.

DHP DIRECTOR'S REPORT

Sandra Ryals, Director, Department of Health Professions, brought the Board up to date on the following issues:

- **Recommendation to reduce fees**

Ms. Ryals referred to a previously distributed letter dated May 21, 2009 that addressed the revenue and expenditure analysis of the Board of Medicine. Ms. Ryals advised that Virginia law (the Callahan Act) requires that an analysis of revenues and expenditures be conducted at least biennially. She advised that the Board is required by law to adjust fees if the revenues and expenditures are more than 10% apart. She stated that the Board of Medicine ended the 2006-2008 biennium with a cash balance of \$2,979,449, and that the current projections indicate that the 2008-2010 revenues will exceed expenditures by approximately \$1,331,998. With that in mind, the recommendation is for the Board to make a one-time fee reduction. She advised that details of the recommendation will be presented at the October Board meeting.

- **Health Practitioners Information Update**

Ms. Ryals described the impact of the HPIP legislative changes, e.g. streamlining the program, gaining efficiencies, and accurately stating the program's mission, e.g., monitoring not intervention. She advised that on July 1, 2009 the program will become the Health Practitioners' Monitoring Program. She noted that DHP has had an internal team working on transitional issues. DHP has also been working with Dr. Silverman and a joint DHP/VCU team to further ensure a smooth transition to new processes. She acknowledged Dr. Harp's participation on both teams and thanked him for his input and efforts.

- **Healthcare Workforce Center**

Ms. Ryals advised the members that progress is being made in analyzing the data available from previous DHP physician surveys. The focus has not only been on physicians, but also physician extenders (i.e. nurse practitioner, physician assistants). She indicated that there is a definite need to improve the collection of data and do more rigorous analysis of it. She thanked Dr. Lee and Dr. Bell for helping out with the effort by their participation on committees. Further reports on progress made by the Center will be provided at future Board meetings.

▪ **Prescription Monitoring Program (PMP) Update**

Ms. Ryals advised that the PMP is a state-mandated program created to deter and detect possible drug abuse, theft of drugs, drug deaths, and provide practitioners with a patient's drug history when there is a need to prescribe pain medication. Ms. Ryals stated that on May 6, 2009 the Department acknowledged that an unauthorized user accessed the program on April 30, 2009. Since that time, it has been determined that there is no evidence that any other data was accessed. Ms. Ryals noted that there is an ongoing criminal investigation. She informed the members that letters have been mailed to individuals whose prescription record in the PMP might have contained a social security number. Ms. Ryals assured the Board that the PMP data was properly backed up. She stated that the PMP continues to be unavailable for users, but that pharmacies are still able to update with information.

▪ **Virginia Performs**

Ms. Ryals acknowledged that the Board of Medicine was the first large board in the Department to achieve the 90% closure rate within 250 days as one of its key performance measures in Virginia Performs. For the 3rd consecutive quarter, the Board of Medicine has achieved the 90% closure rate, which is a credit to the Board members and staff. Ms. Ryals praised the work of the licensure unit and advised that customer satisfaction was at 93%. She thanked everyone for all the work that has been done.

Dr. Piness added some complimentary words acknowledging the efforts of staff, particularly the Discipline Section under the able guidance of Ms. Deschenes. The Board unanimously concurred.

APPROVAL OF THE FEBRUARY 19, 2009

Dr. Cothran moved to approve the minutes of February 19, 2009. The motion was seconded and carried.

ADOPTION OF AGENDA

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

Dr. Cothran asked for an update on Dr. Trent Pierce of Arkansas and the field review of the SAMHSA paper on methadone.

Dr. Harp advised that to his knowledge Dr. Trent Pierce was doing better but still has some residual effects from the ordeal.

Dr. Harp said that he had reviewed the SAMHSA paper with interest. He informed the Board that the paper had been developed to better define the use of methadone in federally licensed narcotic treatment programs. He stated that it was a well done paper, and that it will have value for all practicing physicians that prescribe methadone. Dr. Harp advised that one of the

SAMHSA committee members, Mark Haigney, MD, cardiologist at Bethesda Naval, is scheduled to present on the safe use of methadone at the next PMP conference in March 2010 in Charlottesville. The conference will offer Category I credits.

Introduction of Guests

Dr. Harp acknowledged all of the guests in attendance, including board staff.

PUBLIC COMMENT ON AGENDA ITEMS

Zane Reasoner, PA-C representing VAPA – presented comments in objection to the recommendation from the Advisory Board on Physician Assistants. Mr. Reasoner asked the Board to delay any action until next year. He stated that the VAPA was currently working with MSV on more pressing matters.

Jerry Canaan, JD representing the Medical Society of Virginia – presented comments in support of the recommendation to license polysomnographers. He also requested the Board to refer to the correspondence dated June 8, 2009 from MSV regarding the recommendation of the Ad Hoc Committee on Competency.

PRESIDENT'S REPORT

In Mr. Heretick's absence, Dr. Harp gave some background about the FSMB Foundation and the efforts the Foundation is making to be responsive to the needs of state boards. He then introduced the FSMB foundation video and asked that consideration be given to support their mission. Mr. Heretick has been asked to serve on the Board of Directors of the Foundation.

EXECUTIVE DIRECTOR'S REPORT

▪ Revenue and Expenditures

Dr. Harp informed the Board that 2003 was the last time Board of Medicine fees were increased. He stated that the renewal fees went from \$225.00 to \$337.00 to cover the anticipated cost for investigations, AAG services, hearings, etc. that would result from the passage of HB1441. Subsequent analyses indicated that fees would probably not need to be increased until FY2010. Dr. Harp noted that the savings experienced may in part be due to the high percentage of disciplinary cases that settle instead of going on to a more costly administrative proceeding.

Dr. Cothran asked the Board to take a moment to show their appreciation for the wonderful work that was being done by Ms. Deschenes and her staff. The Discipline Section received a standing ovation. In addition, Dr Cothran questioned if FSMB and other states were aware of the Sanction Reference Points system, and how well it is working for Virginia. Dr. Harp advised that Neal Kauder presented the program to FSMB in 2005, however, he will relay to Mr. Heretick the Board's desire to have it presented to the Foundation.

Dr. Montero inquired as to the financial standing of other state boards. Dr. Harp said he had received a recent ExecNet inquiry and the responses posted indicated that a number of boards seemed to be experiencing budgetary issues.

Dr. Reynolds questioned what our rate of settlement is compared to other states. Ms. Deschenes advised that she attended the Federation of Associations of Regulatory Boards Conference (FARB) a couple of years ago and the talk of delegation to staff to settle a case was relatively new. There are apparently differing situations across the states; some used agency subordinates, Attorney General Staff, office staff, etc. Ms. Deschenes offered to compose something that can be presented to the FSMB.

- **Practitioner Information System**

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

- **HPIP Statistics**

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

- **MDR Inspections**

Dr. Harp reminded the members of the enactment clause under Chapter 475 (2005 General Assembly) charging the Board with the responsibility of promulgating regulations establishing standards for the mixing, diluting, and reconstituting of drugs for administration and the development of a regular inspection program. Dr. Harp advised that the renewal notices and online renewal process posed the question as to whether the licensee mixed, diluted or reconstituted drugs in their practice. Approximately 3700 licensees with Virginia practice addresses answered in the affirmative. Dr. Harp presented an anonymous random sampling of ten licensees with Virginia addresses, in different specialties and different regions of the state. After a brief discussion, Dr. Dalton remarked that this item should be referred to the Executive Committee. Ms. Burks was in agreement with Dr. Dalton stating that this is a “very problematic clause” and did not think the Board is staffed to perform these types of inspections. Dr. Harp advised that this item would be forwarded to the Executive Committee.

- **Appeal from Plastic Surgeon**

Dr. Harp reminded the members that in 2006 the Board of Medicine was asked to consider adoption of the North Carolina stance on outpatient surgery. At that time, the Board reasoned that since regulations regarding office-based anesthesia were in place, there was no need to adopt outpatient surgery regulations. Dr. Harp advised that the issue has again been raised from the plastic surgery community. After brief discussion, the decision was to forward this matter to the Executive Committee.

▪ **Board Retreat/Workshop**

Dr. Harp advised that having a board retreat was always a good idea. He said a retreat would give the members an opportunity to discuss day-to-day processes of the board, review significant topics, and encourage camaraderie and cohesiveness. Dr. Harp advised that Ms. Ryals would consider approval of such a gathering within certain guidelines. Dr. Hoffman, Dr. Reynolds, Dr. Mackler, and General Adams-Ender all agreed to participate on the Retreat Coordination Committee and present a proposal at the October Board meeting.

Dr. Harp spoke to the issue of the board brief/newsletter and the need to find a way to electronically provide information to all licensees and the public.

Dr. Epstein would like a better effort to be made to reach all licensees of the Board and inform them of any regulatory changes and other matters of importance, rather than taking the stance that the licensee would/should access updates from the website. Dr. Jadhav suggested that at the time of renewal the licensee should be asked to provide an email address for the purpose of electronic distribution of a newsletter. Dr. Jadhav stated that since licensees are paying a fee, it is only right that they should be kept informed.

Dr. Reynolds moved that at the time of renewal, the licensee be asked to provide an email address and at least two paper newsletters be produced each year as a compromise with the budgetary restrictions. He remarked that since the Board is in the black, this should not pose a huge fiscal burden. The motion was seconded and carried unanimously. Dr. Harp noted that he was not certain of budgetary projections but that more information would be available at the October Board meeting.

Dr. Dalton asked that this issue be tabled until the budgetary stance is unveiled. Dr. Reynolds respectfully disagreed stating that there is a wellspring within the community regarding the desire to receive this information. After further discussion, Dr. Montero called for the question. The motion was passed unanimously.

▪ **Reappointments**

Dr. Harp informed the members that General Adams-Ender, Dr. Dalton, and Dr. Hoffman have all been reappointed for a second term to expire June 30, 2013. He also advised that Ms. Burks had contacted the Board to say that she would not seek reappointment but would remain active until her replacement is named.

Dr. Piness then presented Ms. Burks with a plaque acknowledging her dedication and service to the Commonwealth of Virginia from 2005-2009.

COMMITTEE AND ADVISORY BOARD REPORTS

Dr. Cothran moved to accept the Committee and Advisory Board reports en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Marschean advised that Dr. Ahmed did appeal his trial court decision from last December. She stated that on April 29, 2009 a reply brief was filed.

Ms. Marschean addressed the biennial requirement for Board member Conflict of Interest Training and advised that information would be disseminated for members to access and complete.

Board of Health Professions

There was no report.

Department of Health Professions

There was no report.

Podiatry Report

There was no report.

Chiropractic Report

Dr Hoffman informed the Board that she attended the NBCE meeting in California in early May. She noted that the NBCE is encouraging boards to adopt regulations requiring documentation and recordkeeping as continuing medical education as well as an ethics guidance document for Board members. Dr. Epstein questioned the need for an ethics requirement for Board members beyond the usual ethics they must comply with as a physician. Dr. Harp explained that an ethics document would just memorialize the expectations of Board members. Dr. Piness noted an ethics document would also inform the public of the expectations of Board members.

Dr. Harp noted that Board staff is still looking for Board members who wish to help with the development of educational modules that could serve as an orientation for new Virginia licensees.

The Board agreed that these items should be addressed by the Executive Committee in August.

NEW BUSINESS

Regulatory Actions

▪ **Adoption of Exempt Regulation - Change of address; address of record**

Ms. Yeatts noted that SB1282 enacted by the 2009 General Assembly requires that the Board allow a licensee to give a second address that will be used as a public address in lieu of the official address of record. The proposed draft amendments will bring the regulations into conformance with the new law.

Dr. Montero moved to adopt the amendments to be effective July 1, 2009. The motions was seconded and carried unanimously.

▪ **Adoption of Notice of Intended Regulatory Action for the licensure of radiologist assistants**

Ms. Yeatts reviewed the proposed NOIRA that is necessary to begin the regulatory process to implement legislation passed in the 2009 General Assembly for the licensure of radiologist assistants.

Dr. Dalton moved to adopt the NOIRA for the promulgation of amendments to Chapter 101 to establish criteria for the licensure and practice of radiologist assistants. The motion was seconded and carried unanimously.

▪ **Licensed Midwives**

Ms. Yeatts reminded the Board of the formation of the Midwifery Workgroup and the members that participated. She stated that the proposed NOIRA would address the provisions of HB2163 and would require midwives to disclose, when appropriate, specific risks to certain patients. The language of the proposed NOIRA had been reviewed by the Advisory Board on Midwifery and unanimously recommended to the Full Board.

After discussion, Dr. Mackler moved to adopt the NOIRA for disclosures by licensed midwives. The motion was seconded and carried.

▪ **Response to Petitions for rulemaking**

Ms. Yeatts briefly reviewed each of the petitions. After discussion, the following motions were made:

Regarding the petitions to remove the 10-year rule on the passage of USMLE

Dr. Dalton stated that anything above and beyond the 10-year requirement would be at odds with the Board's current initiative seeking to enhance competency requirements for licensees.

She strongly suggested that no changes be made to the current regulations. After discussion, the board agreed to deny the requests. The motion was seconded and carried.

Regarding the petition to remove the requirement of supervising physicians to see patients of their physician assistants at least every fourth visit

Ms. Yeatts advised that Ms. Wagner had asked that her petition for rulemaking be withdrawn. She also mentioned that the Advisory Board on Physician Assistants had reviewed this matter and takes a different perspective represented by the following language that would amend 18VAC85-50-110. Responsibilities of the supervisor.

~~See and evaluate. Review the clinical course and treatment plan for any patient who presents for the same acute complaint twice in a single episode of care and has failed to improve significantly as expected. Such physician involvement shall occur not less frequently than every fourth visit for a continuing illness.~~

Ms. Yeatts reminded the Board members of the previous remarks by Mr. Reasoner on behalf of the VAPA. Dr. Hoffman moved to deny the petition to remove the fourth visit rule. The motion was seconded and carried unanimously. No action was taken on the suggested language from the Advisory Board.

▪ **Adoption of Guidance Document**

Ms. Yeatts advised that the Board of Nursing adopted Guidance Document 90-33 to specify that a nurse practitioner may write DNR orders if such authority is included in the NP's written protocol and if the NP has consulted with the physician. Dr. Hoffman questioned the need for the document if collaboration is already required between the physician and the NP. Ms. Yeatts explained that the guidance document will clarify the authority to sign DNR orders. Dr. Epstein asked what legal leg the nursing home/hospital has to stand on if the family of the deceased questions the DNR orders signed by the NP. Ms. Marschean advised that the current law already authorizes the NP to do this; the proposed guidance document provides support and clarification. Ms. Yeatts reiterated that this duty must be in the written protocol as an act delegated by the supervising physician and must be performed in consultation with the physician. Dr. Cothran moved to adopt Guidance Document 90-33 as approved by the Committee of the Joint Boards and the Board of Nursing. The motion was seconded and carried unanimously.

▪ **Review of Legislative Proposal from the Office of Community Integration**

Ms. Yeatts introduced Dr. Paula Saxby, Deputy Executive Director, Board of Nursing. Dr. Saxby addressed the Board and gave a brief historical background on the legislative proposal and the proposed additional exemptions in the Medical Practice and the Nurse Practitioner Acts. Dr. Saxby explained that this legislative proposal is designed to integrate persons with disabilities back into the community free from the requirement for licensed practitioners to oversee consumer-directed health care tasks.

Ms. Yeatts advised that the Office of Community Integration was seeking comments. No action was required since this was not a Department of Health Professions or Board of Medicine initiative. The Board offered no additional comments.

- **Proposed Regulations for Pain Management for Physicians, Physician Assistants, and Nurse Practitioners**

Ms. Wingfield provided background information on the development and status of the proposed regulations for pain management. Ms. Wingfield informed the Board that staff had consulted extensively concerning the proposed regulations and it was determined that the Board would be asked to consider withdrawing the regulations. She stated that the request to withdraw was not an arbitrary decision. As no consensus on content could be reached that appeared to leave quality of care uncompromised and yet not limit access to care, withdrawal of the proposed regulations was seen to be the best option. Ms. Wingfield advised that the urine drug screens were a cornerstone of the proposed regulations and that not all stakeholders believed that all patients would need screening. A secondary issue was the impression that the proposed regulations were punitive and targeted a certain area of care. Additionally, the Prescription Monitoring Program has undergone some legislative changes that will remove the requirement for informed consent from patients, which might change the perspective of the Board on what the regulations should require. The Board posed no questions.

Dr. Cothran moved to withdraw the proposed regulations for the management of chronic, non-malignant pain by physicians, nurse practitioners, and physician assistants – amendments to 18VAC85-20, 18VAC5-50 and 18VAC90-40. The motion was seconded and carried. Dr. Dalton asked that this issue be revisited at a later time.

- **Legislative Proposal from the Ad Hoc Committee on Competency**

Dr. Harp advised that this initiative has been ongoing for about 3 years, having begun during Dr. Cothran's presidential year. Due to other pressing matters, the committee had not met for some time. Recently, Dr. Dalton assumed the chair of the committee and at the second meeting of the reconstituted ad hoc committee in May, a well-defined motion was passed. However, at the third meeting on June 8, 2009, with a different group of committee members in attendance, the language of the May motion was softened to some extent for presentation as a legislative proposal to the Board.

Dr. Dalton offered additional information from FSMB for anyone interested in reviewing it. There were 11 recommendations presented, and each gave the history and concerns on a national level. Dr. Dalton stated that Maintenance of Certification (MOC) through the boards is here and is not going away. She reiterated that MOC and continuing medical education are the only tools that are reliable to demonstrate the competency of a physician. Dr. Dalton addressed MSV's survey findings and felt that these issues have or will become moot in the near future. After a brief discussion, Dr. Cothran moved to propose legislation that applicants for initial licensure must show evidence of completion of an ACGME/AOA approved residency in the specialty in which the applicant intends to practice in the Commonwealth. Further, the applicant must also

be “board eligible” as a result of the completion of the residency. The motion was seconded and carried.

Polysomnography Report

Justin Crow, Research Assistant, Board of Health Professions, presented a brief overview of the information collected and analyzed about the practice of polysomnography. He highlighted the concerns of an overlapping scope of practice with respiratory care and emphasized the available data on CPAP compliance rates and patient vulnerability.

Ms. Yeatts advised that the Advisory Board on Respiratory Care voted to recommend that licensure be established for the practice of polysomnography based upon appropriate education and training. Further, the advisory recommended that licensed respiratory care practitioners not be required to obtain a second license should they pursue the practice of polysomnography. Dr. Mackler moved to accept the recommendation of the Advisory Board. The motion was seconded and carried.

Discipline Report and Statistics

Ms. Deschenes gave a verbal update on the Board of Medicine’s case numbers. This report was for informational purposes only and did not require any action.

Nominating Committee Report

Dr. Reynolds announced the committee’s slate of officers for the Board’s consideration as follows: Jane Piness, MD, President, Karen Ransone, MD, Vice-President, and Valerie Hoffman, DC, Secretary/Treasurer.

Dr. Montero moved that the nominations be closed. The motion was seconded and carried.

Dr. Montero moved that the nominations be accepted as presented. The motion was seconded and carried unanimously.

2010 Standing Meeting Calendar

The Board generally approved the proposed 2010 meeting calendar to be adopted by vote at the next Board meeting, October 29, 2009.

PMSCO

Marcia Lammando, Director of Clinical Consulting, PMSCO Healthcare Consulting, addressed the Board and gave a PowerPoint presentation on PMSCO’s post-licensure assessment system. Ms. Lammando informed the Board of the available assessment modalities, proctorships, peer-to-peer mentoring, simulation labs, etc. Ms. Lammando indicated that physicians have been identified in the Commonwealth that are willing to serve as mentors in their program. The presentation was well received.

Credentials Committee Recommendation

Dr. Hoffman moved to convene a closed meeting pursuant to section 2.2-3711 A. (28) of the Code of Virginia, for the purpose of deliberation to reach a decision in the matter of Dr. Thomas Crowder. Additionally, she moved that, Dr. Harp, Jennifer Deschenes, Amy Marschean, AAG, and Colanthia Morton Opher attend the closed meeting because their presence would aid the Committee in its deliberations. The motion was seconded and carried. Upon returning to open session, the Committee certified that the executive session met the requirements of Virginia Code Section 2.2-3712.

On a motion made by Dr. Ransone and duly seconded, the Board accepted the Credentials Committee's recommendation to deny the application of licensure to practice medicine and surgery to Thomas Crowder, MD pursuant to the findings of fact noted in the Notice of Hearing dated January 27, 2009. The vote was unanimous.

ANNOUNCEMENTS

General Adams-Ender encouraged her colleagues on the Board to read a recently published health care article in the New Yorker magazine entitled: *The Cost Conundrum*.

There were no additional announcements.

NEXT SCHEDULED MEETING: October 29, 2009

ADJOURNMENT: With no further business to conduct, the meeting adjourned at 1:20 p.m.

Jane E. Piness, M.D.
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Operations Manager