

**THE VIRGINIA BOARD OF MEDICINE  
MINUTES  
FEBRUARY 7, 2002**

The Virginia Board of Medicine met on February 7, 2002, at 8:00 a.m., at the Department of Health Professions (“DHP”), 6606 West Broad Street, Richmond, Virginia. The meeting was called to order by Harry C. Beaver, MD, President. Dr. Beaver declared a quorum.

**MEMBERS PRESENT:** Harry C. Beaver, MD, President  
J. Kirkwood Allen, Vice President  
Brian R. Wright, DPM, Secretary/Treasurer  
Robert J. Bettini, MD  
John R. Broadway, Jr., Citizen Member  
Carol Comstock, Citizen Member  
Cheryl Jordan, MD  
Joseph A. Leming, MD  
Gary P. Miller, MD (Late arrival)  
Richard M. Newton, MD  
Robert P. Nirschl, MD  
Dianne L. Reynolds-Cane, MD  
Sue Ellen B. Rocovich, DO  
Cedric B. Rucker, Citizen Member  
Kenneth J. Walker, MD  
Jerry R. Willis, DC

**MEMBERS ABSENT:** James F. Allen, MD  
Clarke Russ, MD

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Ola Powers, Deputy Executive Director, Licensure  
Karen Perrine, Deputy Executive Director, Discipline  
Kate Nobsch, Deputy Executive Director, Physician Profile  
Robert Nebiker, Director, DHP  
Deborah A. Ordiway, Recording Secretary

**OTHERS PRESENT:** Roscoe Roberts, Assistant Attorney General  
Elaine Yeatts, DHP Senior Regulatory Analyst

**GUESTS PRESENT:** Annette Ernst, OT, chair, Advisory Board on Occupational Therapy; William R. Ward, RRT, chair, Advisory Board on Respiratory Care; Ronald McCombs, Eastern Virginia Medical School; Claudette Dalton-Alexander, MD, University of Virginia; Maria S. Harris, Virginia Osteopathic Medical Association; Paul Spector, DO, president-elect, Virginia Osteopathic Medical Association; James M. Messmer, MD, MCV/VCU School of Medicine; Rebecca T. Perdue, Virginia Society for Clinical Lab Science; Steven B. Powers, MD, member of the Committee of the Joint Boards of Nursing and Medicine; Shelley F. Conroy, RN, Ed.D.,

member of the Committee of the Joint Boards of Nursing and Medicine; Scott Dralle, RRT, Virginia Society for Respiratory Care; Mark Fusco, PA, President, Virginia Academy of Physician Assistants; Joyce Hawkins, Virginia Society of Radiologic Technologists; Roy E. Heaton, DO, president, Virginia Osteopathic Medical Association; Peter Boling, MD, member of the Committee of the Joint Boards of Nursing and Medicine; Bonnie McQuaid, RRT, member of the Advisory Board on Respiratory Care; Jolynn T. Hamelman, Virginia Society for Respiratory Care; Dixie Tooke-Rawlins, DO, Dean of the Edward Via Virginia School of Osteopathic Medicine; John Rocovich, Esquire; Warren W. Koontz, MD; Jim Wolf; and Michael Menefee, former member of the Advisory Board on Athletic Training

## **INTRODUCTION OF GUESTS**

Dr. Beaver welcomed the invited guests. Dr. Harp introduced the two new citizen members, Carol Comstock, RN, and John R. Broadway, Jr., Esquire.

## **ADOPTION OF AGENDA**

Dr. Wright moved to adopt the amended agenda. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Shelley F. Conroy, RN, Ed.D., member of the Committee of the Joint Boards of Nursing and Medicine, deferred to Steven B. Powers, MD, member of the Committee of the Joint Boards of Nursing and Medicine to speak on the proposed regulatory changes for the oversight of nurse practitioners. Dr. Powers stated he has supervised the independent practice of nurse practitioners and reviewing medical records is not a problem, but a monthly site inspection is difficult. Dr. Powers suggested that a quarterly site inspection would serve the purpose of the state and protect the welfare of the citizens.

Peter Boling, MD, member of the Committee of the Joint Boards of Nursing and Medicine, has 18 years of experience working with nurse practitioners in collaborative practice. He stated that the key is establishing a collaborative relationship with the nurse practitioners, with ongoing communication. Once a month site visits are not necessary, and he suggested quarterly visits and monthly medical record reviews.

## **APPROVAL OF MINUTES OF OCTOBER 11, 2001**

Mr. Allen moved to approve the minutes of the Board, dated October 11, 2001. The motion was seconded and carried unanimously.

## **PRESENTATION OF PLAQUE TO MICHAEL MENELEE**

An award plaque was presented to Michael Menefee for his tenure as a member of the Advisory Board on Athletic Training from July 1, 1999 to June 30, 2001.

## REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

### President – Harry C. Beaver, MD

No report.

### Vice President – J. Kirkwood Allen

No report.

### Executive Director

Dr. Harp stated that at its October 11, 2001 meeting the board voted to move ahead to become paperless at its meetings. The big issue is scanning of documents by a vendor. At the current time the vendors are clarifying proposals.

A copy of the DHP sanction study was distributed to the board members.

Dr. Harp stated that in regard to the radiologic technology licensing issue the vehicle developed was a Consent Order that provided for a license with a reprimand for the unlicensed practice of radiology. Most have signed the Consent Orders to be licensed quickly and to avoid a hearing before the Credentials Committee. There have been about 20 Consent Orders executed.

On January 4, 2002, the first meeting of the workgroup on outpatient anesthesia regulations was held. This workgroup consists of Dr. Beaver, chair, Dr. Harp, Ms. Yeatts, Ms. Powers, a surgeon from the Medical Society of Virginia, an anesthesiologist from the Medical Society of Virginia, an anesthesiologist from VOMA, a podiatrist and a CRNA. The next meeting will be on February 22, 2002. House Bill 213 requires these regulations to be finished sometime this year.

Dr. Harp stated that Dr. Leming is being considered as a candidate for the Board of Directors of the Federation of State Medical Boards. There are two slots to be filled with five candidates running. The Federation's meeting will be the last week of April in San Diego, California. Mr. Allen and Dr. Reynolds-Cane expressed an interest in attending this meeting. Also attending will be Dr. Leming and Dr. Beaver.

Dr. Leming stated that Dr. Russ would like to attend the Federation meeting and would like the board to pay for his registration fee. Dr. Willis moved that the board pay Dr. Russ' registration fee. The motion was seconded. Discussion followed regarding how board members are chosen to attend the Federation meeting. Dr. Leming amended his motion to state that the board pay for as many as can be funded to attend the Federation meeting. The motion was seconded and carried unanimously.

The District of Columbia would like to have a meeting during the Federation meeting in San Diego. Dr. Walker stated he does not see any big agenda items to talk about. Dr. Harp stated the main issue of concern is reciprocity for licensure. There was no decision made to have a meeting.

A copy of the December 2001 expenditures report and license count report were distributed to the board members.

There are 157 Board of Medicine licensees enrolled in HPIP.

Secretary/Treasurer - Brian R. Wright, DPM

No report.

## **COMMITTEE REPORTS**

Executive Committee - Dr. Beaver

Dr. Beaver moved to accept the minutes of the Executive Committee dated December 7, 2001. The motion was seconded and carried unanimously.

Legislative Committee - Mr. Allen

Dr. Newton moved to accept the minutes of the Legislative Committee dated January 25, 2002. The motion was seconded and carried unanimously.

Credentials Committee - Dr. Jordan

Dr. Jordan moved to accept the minutes of the Credentials Committee dated October 12, 2001 and December 7, 2001. The motion was seconded and carried unanimously.

Advisory Committee on Physician Assistants - Dr. Leming

Mr. Rucker moved to accept the minutes of the Advisory Committee on Physician Assistants dated January 11, 2002. The motion was seconded and carried unanimously.

Advisory Board on Occupational Therapy - Annette Ernst, OT

Dr. Jordan moved to accept the minutes of the Advisory Board on Occupational Therapy dated January 10, 2002. The motion was seconded and carried unanimously.

Advisory Board on Respiratory Care - William D. Ward, RRT

Mr. Rucker moved to accept the minutes of the Advisory Board on Respiratory Care dated January 10, 2002. The motion was seconded and carried unanimously.

#### Advisory Committee on Acupuncture - Dr. Willis

Dr. Willis moved to accept the minutes of the Advisory Committee on Acupuncture dated January 9, 2002. The motion was seconded and carried unanimously.

#### Advisory Committee on Radiologic Technologists - Dr. Wright

Dr. Wright moved to accept the minutes of the Advisory Committee on Radiologic Technologists dated January 9, 2002. The motion was seconded and carried unanimously. Dr. Wright stated that at this meeting Dr. Konerding moved to recommend that 18 VAC 85-101-70(3) would mean that any other program acceptable to the board must be a program that either meets or exceeds the terms of 18 VAC 85-101-70(1), and to authorize the Executive Director of the Board of Medicine to approve such courses at his discretion.

#### Advisory Board on Athletic Training – Dr. Harp

This advisory board did not meet since the June Board meeting. Dr. Harp stated there are 140 athletic trainers certified, of which 137 are in state and three out of state. Dr. Beaver moved to accept Dr. Harp's report. The motion was seconded and carried unanimously.

#### Committee of the Joint Boards of Medicine and Nursing - Dr. Bettini

Dr. Bettini moved to accept the minutes of the Committee of the Joint Boards of Nursing and Medicine dated November 7, 2001. The motion was seconded and carried unanimously.

### **OTHER REPORTS**

#### Board of Health Professions - Dr. Willis

No report.

#### Assistant Attorney General – Roscoe Roberts, AAG

Mr. Roberts reported on a case styled Mr. Faison versus the Board of Medicine. Mr. Faison wanted the closed investigative files relative to the death of his wife. He filed a federal lawsuit to obtain these records and the Norfolk U.S. District Court dismissed his case. He filed a Writ of Mandamus in state court demanding that the board release this information. On January 25<sup>th</sup> Mr. Roberts appeared in court and the Writ of Mandamus was dismissed. Section 54.1-2400.2 makes investigative files confidential and can only be released in certain limited circumstances. The statute provides that a court can order the investigative files to be made available, but because Mr. Faison did not express a need to satisfy the court, the judge denied his motion. If Mr. Faison appeals, the case will go to the Supreme Court.

The case of Steven M. Goad, MD, license number 0101-050616, has been appealed by his attorney to the Virginia Court of Appeals from the Richmond Circuit Court.

Dr. Russell Carter, license number 0101-018787, has appealed the disciplinary case against him to the Court of Appeals.

Dr. Vinodchandra Modi, license number 0101-030142, has been indicted by the federal government. The defense counsel is asking the board to release the closed investigative files.

#### Department of Health Professions – Mr. Nebiker

Dr. Beaver announced that effective February 5, 2002, Mr. Nebiker is the Director of the Department of Health Professions.

Mr. Nebiker stated there is a shortfall in the state general fund. Governor Warner has called this a structural imbalance. Governor Gilmore's budget amendment transferred \$300,000 out of DHP funds for this year; a \$929,000 transfer for next year and a \$925,000 transfer the following year. Governor Warner has submitted amendments that strike this transfer of funds from the Department of Health Professions.

Former Senator Jane Woods has been appointed as Secretary of Health and Human Resources. Ms. Woods has invited persons currently sitting on boards who are interested in reappointment to submit that request when their reappointments are coming up to the Secretary of the Commonwealth.

Mr. Nebiker distributed a list of issues he feels the Department of Health Professions should address, and asked for input from board members regarding this list.

Mr. Nebiker stated that the Department has changed its policy regarding release of certain complaint information to respondents during the course of an investigation. Upon scheduling an interview with a respondent during an investigation, a copy of the initial complaint is going to be provided to the respondent, unless the release would obstruct a criminal or regulatory investigation. Certain information, such as the complainant's address and phone number will be redacted.

Executive Order 6 encourages all state boards, commissions and agencies to invite organizations to which they belong to hold their meetings in Virginia. Ms. Yeatts will be coordinating DHP's response with the Department of Travel and Tourism.

#### Podiatry Report - Dr. Wright

No report.

#### Chiropractic Report - Dr. Willis

Dr. Willis stated that the bill dealing with creating an independent chiropractic board was opposed by the Virginia Chiropractic Association and was defeated in the House and Senate.

## **NEW BUSINESS**

### Board appointments – Dr. Harp

Dr. Harp stated two additional citizen board members were added to the Board as of July 1, 2001 and the clinical psychologist position was deleted. Ms. Comstock and Mr. Broadway are the new appointees. Dr. Miller and Dr. Willis were reappointed to the Board of Medicine. All are subject to confirmation by the General Assembly.

### Presentation by the Dean of the Edward Via Virginia School of Osteopathic Medicine – Dixie Tooke-Rawlins, DO

John Rocovich, Esquire, gave background information on the creation of the Edward Via Virginia School of Osteopathic Medicine. This school will be located in the Virginia Tech Corporate Center in Blacksburg, Virginia.

Dixie Tooke-Rawlins, DO, stated that the mission of the school is to train physicians for underserved areas. The accreditation process was approved on January 12, 2002 by the Bureau of Professional Education and by the State Council on Higher Education on January 23, 2002.

### Chart on status of regulations – Ms. Yeatts

A handout on the Board of Medicine's regulatory actions was distributed.

### Regulatory actions – Ms. Yeatts

### **Adoption of Final Regulations 18 VAC 90-30-10 et seq. – Regulations Governing the Practice of Nurse Practitioners and 18 VAC 90-40-10 et seq. – Regulations for Prescriptive Authority**

Mr. Rucker moved to adopt the final regulations 18 VAC 90-30-10 et seq. and 18 VAC 90-40-10 et seq. The motion was seconded and carried unanimously.

### **Adoption of Proposed Regulations 18 VAC 90-40-10 et seq. – Regulations for Prescriptive Authority**

Dr. Wright moved to adopt the proposed regulations for prescriptive authority for nurse practitioners. The motion was seconded and carried unanimously.

### **Adoption of the Pre-NOIRA for Periodic Review of the General Regulations of the Board of Medicine**

Mr. Rucker moved to adopt the pre-NOIRA for periodic review of the General Regulations of the Board of Medicine. The motion was seconded and carried unanimously.

### Legislative report – Ms. Yeatts

Ms. Yeatts distributed a handout listing bills at the General Assembly. House Bill 217 would change the composition of the advisory boards and place a member of the advisory board on a disciplinary panel of an informal conference if the respondent is a member of that profession.

House Bill 687 would amend the provisions for physician assistants and specify it is not necessary for the supervising physician to be physically present in the facility when the physician assistant is providing services.

All of the midwifery bills have been defeated.

House Bill 1259 which would require the Board of Medicine to regulate surgical assistants has been continued to 2003.

House Bill 1318 would allow practitioners who are licensed in other states to be able to come to Virginia and practice as a volunteer in a free clinic. The only requirement is that they register with the board. Dr. Leming queried whether this bill would deem a licensed provider in another jurisdiction to be licensed in Virginia during a catastrophe. Ms. Yeatts stated that was not the intended purpose. Mr. Nebiker stated he would communicate this issue to Mr. Hager.

Dr. Leming moved that a resolution from the Virginia Board of Medicine be sent to the Federation of State Medical Boards to include an agenda item to discuss disaster victims. Dr. Harp and Dr. Leming will compose the resolution that will be submitted to the Federation. The motion was seconded and carried unanimously.

Senate Bill 59 makes some corrections to the data required by the physician profile. Ms. Yeatts stated physicians would be required to provide e-mail or a fax number. This information will not be on the profile, or subject to the Freedom of Information Act. This information would be available to the Department of Health.

Senate Bill 398 amends the regulatory process relating to disciplinary proceedings.

Dr. Leming stated that House Bill 1290 and Senate Bill 1368 created a code requirement for informed consent of a pharmaceutical product. House Bill 1290 was carried over and Senate Bill 1368 was withdrawn.

### Update on Practitioner Information System – Ms. Nosbisch

Ms. Nosbisch stated another initial notification mailing was sent on January 24, 2002, to 308 new licensees. As of January 30, 2002, 31,058 licensees have completed their profiles. At the December 7, 2001 Executive Committee meeting the next step for noncompliant licensees was developed. If a licensee has not completed his profile within 90 days of the initial notification, he will be mailed a notice to appear for an informal conference or can sign the enclosed consent order in lieu of the IFC. The consent order will include the findings of fact, conclusions of law,

impose censure and require the licensee to complete the questionnaire within 30 days or be subject to further disciplinary action by the Board.

Ms. Nosbisch spoke at the Council on Licensure, Enforcement and Regulation conference in San Antonio, Texas, on the Practitioner Information Project.

Ms. Nosbisch stated there have been numerous articles in various newspapers throughout Virginia on the practitioner profile. Enforcement has approximately 20 licensees they are investigating. Mr. Allen stated not to respond to the press, but to continue to discipline those who have misrepresented themselves on the physician profile.

Dr. Harp suggested that a press release be prepared for the newspapers on the Practitioner Information Project.

#### Disciplinary Caseload – Ms. Perrine

Ms. Perrine stated for calendar year 2001, the board closed a total of 1,055 cases. Out of the 1,055 cases 115 were closed with a violation. There were 67 informal conferences, 19 formal hearings, 27 pre-hearing consent orders, and 30 continuances granted. Currently pending at board level for purposes of scheduling proceedings are 12 cases, seven for informal conferences and five for formal hearings. During the last year the board received 1,358 complaints. Currently there are 1,200 cases open with 530 in investigation, 100 being prepared for proceeding, and the rest at probable cause. There are approximately 62 licensees under orders being monitored by the compliance unit.

Dr. Leming stated that the Board of Health Professions and the Department of Health Professions is an agency of the Commonwealth of Virginia. Governor Warner has submitted a budget amendment wherein the agency's budget would not be reduced, but the overall budget may be reduced.

Dr. Leming moved that a request be forwarded to the Secretary's Office to clarify whether or not we can continue to fund our investigative force or other support functions in a fashion that is necessary for the board to protect the public. The motion was seconded and carried unanimously.

Dr. Leming stated that this agency ought to be a semi-independent authority. Dr. Leming moved that the Board of Medicine pass onto the Director of the Department of Health Professions a position that we believe that the mission envisioned of the protection of the public of the Commonwealth of Virginia would be best accomplished in a semi-independent authority structure which would retain gubernatorial appointment and which would retain legal counsel from the Attorney General's office. It would remove us budgetarily from that process such that we would self-generate our fees, be able to pay our employees what we need to pay our employees to retain them, and would be able to hire the employees we need to hire in order to accomplish our envisioned mission. The motion was seconded and carried, with Dr. Walker voting no.

### Advisory Committee on Radiologic Technology response to the Board's charge – Dr. Harp

The Advisory Committee supports the development of legislation to remove the hospital exemption and it also voiced support for the development of broad law that would effectively penalize any employer that hired an unlicensed rad tech or rad tech-limited into a position that required licensure for lawful practice.

Dr. Leming moved that Ms. Yeatts and Dr. Harp develop language for the above legislation. This language would be presented to the Advisory Committee for review and from there it would go to the Legislative Committee for review. The motion was seconded and carried unanimously.

Dr. Wright stated that the Advisory Committee asked that the Executive Director be delegated to approve any other education programs for certification as long as it met the minimum requirements of the law. Dr. Harp stated that rad tech-limiteds are to have 50 hours of education and an instructor with a bachelor's degree and ARRT certification.

Dr. Leming moved to delegate Dr. Harp, Ola Powers and Dr. Jordan the ability to approve rad tech programs. The motion was seconded and carried unanimously.

### Letter from Dr. Stroube, Acting State Health Commissioner – Dr. Harp

No action was needed on this item because Senate Bill 59 takes care of the matter.

### Request for rulemaking on face-to-face continuing education – Dr. Harp

Graenum R. Schiff, MD, and eight of his colleagues submitted a request for rulemaking to permit certain Type II face-to-face continuing education activities to qualify as Type I. The Legislative Committee recommended denial of the petition.

Dr. Willis moved to deny the petition for rulemaking. The motion was seconded and carried unanimously.

### Nominating Committee Report – Dr. Leming

The Nominating Committee met and the panel for officers for 2002-2003 is as follows:

President – Harry C. Beaver, MD  
Vice President – J. Kirkwood Allen  
Secretary/Treasurer – Dianne Reynolds-Cane, MD

Dr. Leming was the designated chair for the elections. There were no nominations from the floor. Dr. Walker moved to vote as a slate. The motion was seconded and carried unanimously.

There were no other slates from the floor. Dr. Jordan moved that the nominations be closed. The motion was seconded and carried unanimously.

The slate of the nominating committee carried unanimously.

Dr. Leming thanked Dr. Wright for his work as secretary/treasurer. Dr. Reynolds-Cane echoed Dr. Leming's sentiments.

### **Other Business**

#### Next Regularly Scheduled Board Meeting

The Board of Medicine will meet on June 6, 2002, at Department of Health Professions, 6606 West Broad Street, Richmond, Virginia.

#### Review of Cases Recommended for Closure

The Board members proceeded to review cases recommended for closure.

#### Adjournment

With no further business to discuss, the meeting of the Board of Medicine was adjourned.

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Harry C. Beaver, MD  
President

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William L. Harp, MD  
Executive Director

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Deborah A. Ordiway  
Recording Secretary