

**THE VIRGINIA BOARD OF MEDICINE
MINUTES
JUNE 5, 2003**

The Virginia Board of Medicine met on June 5, 2003, at 8:00 a.m., at the Department of Health Professions ("DHP"), 6603 West Broad Street, Richmond, Virginia. Harry C. Beaver, MD, President, called the meeting to order. Dr. Beaver declared a quorum.

MEMBERS PRESENT: Harry C. Beaver, MD, President
J. Kirkwood Allen, Vice President, Citizen Member
Diane Reynolds-Cane, MD, Secretary/Treasurer
James F. Allen, MD
Robert J. Bettini, MD
Carol Comstock, RN, Citizen Member
Malcolm L. Cothran, Jr., MD
Cheryl Jordan, MD
Thomas B. Leecost, DPM, MD
Joseph A. Leming, MD
Gary P. Miller, MD
Robert Nirschl, MD
Sue Ellen B. Rocovich, DO
Cedric B. Rucker, Citizen Member
Kenneth J. Walker, MD
Jerry R. Willis, DC

MEMBERS ABSENT: Clarke Russ, MD
Rev. LaVert Taylor, Citizen Member

STAFF PRESENT: William L. Harp, MD, Executive Director
Ola Powers, Deputy Executive Director,
Licensure
Karen Perrine, Deputy Executive Director, Discipline
Kate Nosbisch, Deputy Executive Director,
Practitioner Information
Robert Nebiker, Director, DHP
Elaine Yeatts, DHP Senior Regulatory Analyst
Gail Jaspén, Deputy Director, DHP

OTHERS PRESENT: Roscoe Roberts, Assistant Attorney General
Nancy Kaplan, Intern, Attorney General's office

GUESTS PRESENT: Bonnie L. McQuaid, RRT, chair, Advisory Board on Respiratory Care; Erwin E. Fender, PA-C, chair, Advisory Board on Physician Assistants; Susan Ward, Virginia Hospital Association; Claudette Dalton, MD, Associate Dean of UVA School of Medicine; Brian Walsh, RRT, Respiratory Care Advisory Board member;

Matthew Gainey, Pharm. D, Pardue Pharmacy L.P., and Jeff Buthe, Medical Society of Virginia.

INTRODUCTION OF GUESTS

Dr. Beaver welcomed the invited guests and other attendees.

ADOPTION OF AGENDA

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

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

APPROVAL OF MINUTES OF FEBRUARY 6, 2003

Dr. Leming moved to approve the minutes of the Board, dated February 6, 2003. The motion was seconded and carried unanimously.

PRESENTATION OF PLAQUES TO DR. JORDAN AND DR. LEMING

Plaques were presented to Dr. Jordan and Dr. Leming for their tenure as members of the Board of Medicine. Dr. Beaver thanked each of the Board members individually and each gave brief statements of farewell.

REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

President – Harry C. Beaver, MD

Dr. Beaver spoke to the challenges that lay ahead for the Board and asked for Board members' continued commitment and dedication. He thanked each Board member for the support shown in the last two years.

Vice President – J. Kirkwood Allen

No report.

Secretary/Treasurer – Dianne L. Reynolds-Cane, MD

No report

Prior to the Executive Director's report, Dr. Beaver passed the gavel to Mr. Allen, who will serve as President for 2003 – 2004.

Executive Director – William L. Harp, M.D.

Dr. Harp thanked Drs. Jordan and Leming for serving on the Board. Dr. Harp reported that the Board's discipline case resolution standard is to finish cases in less than one year, at least to the informal conference level. His report included information about the Medical Review Coordinator position for the Board of Medicine. He stated that the closing date for applications for this position was June 16, 2003, and that Board members may be asked to serve on the interview panel for this position. He spoke to the budget and said that the Board was well within its budget for the 2002-2004 biennium. He said that a request for an increase of fees would be necessary for the 2004-2006 budget due to more discipline cases, more informal conferences, more formal conferences, more mailings, increased copying, more per diems, Physician Profile auditing and associated disciplinary processes. Dr. Leming moved to ask the Board of Medicine to consider not funding the Practitioner Information web site as an option to balance the budget as the Board incurs future needs for revenue. He asked the Board to look critically at that revenue stream currently devoted to a web-based initiative and consider repeal of that language and use that money to further the real mission and vision of the Board. The motion was seconded and discussed. Dr. Harp indicated that abolition of the practitioner profile website would require a legislative remedy. There was a discussion about utilization of the Board's website versus actual staff time. Dr. Leming stated that his main focus was on the taxation of practitioners and how dollars are spent. Upon vote by the Board, Dr. Leming's motion was defeated. Dr. Harp also mentioned the Sanctions Reference Study, indicating that the study was developing descriptive variables that would benefit all boards. Lastly, he asked for suggestions for a date and location for a Board retreat. The date suggested was September 12 and 13, 2003 and the location suggested was the western part of Virginia.

COMMITTEE REPORTS

Executive Committee - Dr. Beaver

Dr. Beaver moved to accept the minutes of the Executive Committee dated April 4, 2003 and April 16, 2003. The motion was seconded and carried unanimously.

Legislative Committee - Mr. Allen

No report

Credentials Committee - Dr. Jordan

No report.

Advisory Board on Physician Assistants – Mr. Fender, PA-C

Mr. Fender asked that the Board accept the minutes of the Advisory Board on Physician Assistants dated May 9, 2003. Dr. Leming moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Occupational Therapy – Ms. Gallagher, OT

In Ms. Gallagher's absence, Dr. Harp asked that the Board accept the minutes of the Advisory Board on Occupational Therapy dated May 8, 2003. Dr. Leming moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Respiratory Care – Ms. McQuaid, RRT

Ms. McQuaid asked that the Board accept the minutes of the Advisory Board on Respiratory Care dated May 8, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Acupuncture – Ms. Forman, L.Ac.

In Ms. Forman's absence, Dr. Harp asked that the Board accept the minutes of the Advisory Board on Acupuncture dated May 7, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Radiologic Technologists – Ms. Heffernan, RT

In Ms. Heffernan's absence, Dr. Harp asked that the Board accept the minutes of the Advisory Board on Radiologic Technologists dated May 7, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

Advisory Board on Athletic Training – Mr. Pawlowski

In Mr. Pawlowski's absence, Dr. Harp asked that the Board accept the minutes of the Advisory Board on Athletic Training dated May 6, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

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

No report.

Ad Hoc Committee of the Virginia Board of Medicine for the Sanctions Reference Study

Dr. Harp asked that the Board accept the minutes of the Ad Hoc Committee dated April 2, 2003 and May 16, 2003. Dr. Beaver moved to accept. The motion was seconded and carried unanimously.

OTHER REPORTS

Board of Health Professions - Dr. Reynolds-Cane

Dr. Reynolds-Cane reported that the Board of Health Professions met on May 2, 2003 and discussed HB 1441 as well as the Sanctions Reference Study.

Assistant Attorney General – Roscoe Roberts, AAG

Dr. Leming moved that the Board go into Executive Session pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for consultation with and the provision of legal advice by the Assistant Attorney General in the matter of possible or actual litigation involving this Board. Additionally, he moved that William L. Harp, M.D., Karen Perrine, Robert Nebiker, Elaine Yeatts, Jane Hickey, Esq., Nancy Kaplan and Gail Jaspen attend as their presence in the closed meeting was deemed necessary and/or their presence would aid the Board in its consideration of any discussed matters. The motion was seconded and carried. The Board went into Executive Session. Upon return to open session, the Board certified the closed session in accordance with Section 2.2-3712(D) of the Code of Virginia. Dr. Leming then moved that Board counsel bring closure to the matter of the Commonwealth of Virginia vs. Goad. The motion was seconded, discussed and carried, with Dr. Bettini abstaining.

Department of Health Professions – Mr. Nebiker

Mr. Nebiker reported that the Department was working on a guidance document subsequent to HB 1441 and hoped to have a draft out next week. The document concentrates on the required reporting of health care institutions. He stated that the Department has added eleven new full-time employees and that the Department entered into a revised memorandum of agreement with the Attorney General's office and may expect as much as an additional 4000 hours of service. He also discussed the Prescription Drug Monitoring Program. He indicated that a grant was awarded by the Federal Government for implementation in Southwest Virginia; comment on proposed regulations for implementation of the program ends June 6, 2003. The Department will be advertising for a program manager. Mr. Nebiker stated that on-line renewal will begin in the fall. He announced that Betty Jolly was hired as Assistant Director for Policy Education, DHP and would be working on educational efforts for the Department, which might include disseminating information about new reporting requirements to involved parties and the public. Gail Jaspen, Deputy Director of DHP, has taken on new responsibilities including coordination of legal services with the Attorney General's office.

Podiatry Report - Dr. Leecost

Dr. Harp reported in Dr. Leecost's absence that the Virginia Podiatric Association's Podiatric Radiologic Technology-limited educational course and exam approved last year by the Board was offered for the first time in Virginia Beach this spring.

Chiropractic Report - Dr. Willis

No report.

NEW BUSINESS

Item 1: Summary of Legislation from 2003 General Assembly

Ms. Yeatts presented information and asked if there were questions. Dr. Leming asked about HB 1706. She explained that HB 1706 provided for the expansion of guidelines for ethics and that this topic was to be addressed later in the agenda.

Item 2: Status of Regulations and Regulatory Actions

- a) Ms. Yeatts asked the Board to consider the comments submitted, to develop a response, and adopt final regulations for the periodic review and amendments of the General Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic – 18 VAC 85-20-10 et seq. Dr. Willis spoke to acupuncture and the practice of chiropractic. He moved not to accept the proposed change to 18 VAC 85-20-131(2). The motion was seconded and discussed. Dr. Willis withdrew his motion. Dr. Beaver moved to adopt final regulations 18 VAC 85-20-10 et seq. The motion was seconded and carried unanimously.
- b) Ms. Yeatts asked the Board to adopt emergency regulations and adopt a Notice of Intended Regulatory Action (NOIRA) to replace the emergency regulations with final regulations. The two changes in the emergency regulations included fee increases and a code change in item “I”. Dr. Leming moved not to accept emergency regulations on these matters. The motion was seconded. After discussion, Dr. Leming amended his motion to accept the emergency regulations, but if the Board’s case resolutions standards are not met within a year, fees were to revert back to those in the original regulations. The vote on Dr. Leming’s motion was 1-yes, 14-no. The motion was defeated. Dr. Cothran moved to accept the emergency regulations. The motion was seconded. Dr. Leming made a motion to table this agenda item. There was no second to his motion. The original motion carried with a vote of 12-yes and 3-no, with Drs. Jordan, Leming and Ms. Comstock voting nay.
- c) Ms. Yeatts asked the Board to adopt the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic – 18 VAC 85-20-122, 18 VAC 85-20-210 and 18 VAC 85-20-290; Amendments required by changes in the Code of Virginia (General Assembly 2003 Session) Dr. Beaver moved to adopt the regulations. The motion was seconded, discussed and carried.
- d) Ms. Yeatts asked the Board to adopt the NOIRA requested by the Athletic Trainer Advisory Board to expand the current provisional certification to include

persons who have applied for state certification and are otherwise qualified but who are awaiting a completed application. Dr. Cothran moved to adopt the NOIRA. The motion was seconded and discussed at length. The motion carried with an 8-yes, 7-no vote.

3. PROPOSED LEGISLATION

- a) Ms. Yeatts asked the Board to accept proposed legislation regarding correction of “Certified respiratory therapy practitioner” to “Licensed respiratory care practitioner” and to allow certified athletic trainers to possess and administer epinephrine in emergency cases of anaphylactic shock pursuant to an oral or written order or standing protocol issued by an authorized prescriber for inclusion in the DHP legislative packet. Dr. Nirschl moved to delete the issue of athletic trainers administering epinephrine until receipt of further information. The motion was seconded, discussed and carried unanimously.
- b) Ms. Yeatts asked the Board to accept proposed legislation regarding the removal of the exemption for licensure for Radiologic technologists employed by licensed hospitals. Dr. Beaver moved to accept. The motion was seconded, discussed and carried unanimously.
- c) Ms. Yeatts asked the Board to accept proposed legislation regarding clarification that a physician assistant may provide consultative services in a hospital emergency department. Dr. Leming moved to accept. The motion was seconded and discussed. Dr. Leming amended his motion to strike the language “and in compliance with applicable state and federal law and with the policies and procedures of the hospital.” The amended motion was seconded, discussed and carried.
- d) Ms. Perrine explained proposed legislation that would amend Section 54.1-2919 of the Code of Virginia regarding procedures for informal conferences. The Board chose to have the proposal move forward, circulate for comment and be brought back to the August Executive Committee meeting for review. Dr. Cothran made the motion, which was seconded, discussed and carried.

4. CREDENTIALS EVALUATION SERVICE FOR ACUPUNCTURE

Ms. Yeatts presented a recommendation by the Advisory Board on Acupuncture that the Board approve any credential evaluation service that is a member of the National Association of Credential Evaluation Services (NACES) or is approved by the National Certification Commission for Acupuncture and Oriental Medicine (NCCAOM). Dr. Leming moved to accept the recommendation. The motion was seconded, discussed and carried.

5. IMPLEMENTATION OF HB 1441 – USE OF CONFIDENTIAL CONSENT AGREEMENTS

Ms. Perrine presented a handout and discussed Confidential Consent Agreements (CCA) and their use for certain categories of cases. Dr. Leming proposed to accept under “Types of Cases for Consideration”, Practitioner Profile non-completes, late completes and inadvertent omissions as appropriate for Confidential Consent Agreements. However, he further proposed that intentional omissions and false or misleading information would not be appropriate for CCA’s. Dr. Leming also proposed that the Board adopt Option 2 under “Process”, whereby the Board would set policy or criteria for the agreement and further proposed that the Board establish a committee to review and offer those agreements. There was no formal motion made. Mr. Nebiker expressed concerns about the impact on Board member workload, on processes and the determination of eligibility for a Confidential Consent Agreement. Dr. Harp commented on ways to expedite the process. He had concerns that a significant percentage of licensees may opt not to accept a Confidential Consent Agreement. It was agreed to forward this agenda item to the Legislative Committee in September.

6. DELINEATION OF ETHICS

Dr. Harp presented information relating to ethics for the professions regulated by the Board. He stated that the Board can adopt a code of ethics by reference or can derive their own. He recommended an ad hoc committee if they chose to derive their own. Ms. Yeatts suggested a Pre-NOIRA to include all professions. Dr. Leming moved to create a Pre-NOIRA and form an ad hoc committee to adopt a code of ethics. The motion was seconded and discussed. Ms. Perrine provided information about other states’ code of ethics. After discussion, the motion was carried unanimously.

7. NEW MEETING SCHEDULE

Ms. Perrine presented the current basic schedule and suggested a revision to allow for a fourth Board meeting each year. After some discussion, the Board staff was asked to revisit this matter and present other options to the Executive Committee in August.

8. PRACTITIONER INFORMATION REPORT

Ms. Nosbisch reported that a third letter would be sent in July to those licensees who had not responded to the requirements of SB 59 as recommended by the Executive Committee and that Confidential Consent Agreements relating to Practitioner Profile issues would be discussed by the full Board.

9. DISCIPLINE REPORT

Ms. Perrine reported on the status of disciplinary cases.

10. NEXT MEETING

The next meeting of the full Board is scheduled for October 9, 2003.

11. ADJOURNMENT

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

J. Kirkwood Allen
President

William L. Harp, MD
Executive Director

Ola Powers
Recording Secretary