

**THE VIRGINIA BOARD OF MEDICINE  
MINUTES  
APRIL 22, 2004**

The Virginia Board of Medicine meeting commenced at 8:30 a.m. on April 22, 2004, at the Department of Health Professions (“DHP”), 6603 West Broad Street, Richmond, Virginia. The meeting was called to order by Dianne Reynolds-Cane, MD, President.

**MEMBERS PRESENT:** Dianne Reynolds-Cane, MD, President  
Carol E. Comstock, RN, Vice President  
Harry C. Beaver, MD  
Robert J. Bettini, MD  
Sandra Anderson Bell, MD  
Christine Ober Bridge  
Malcolm L. Cothran, Jr., MD  
Alvin Edwards, MDiv, PhD  
Stephen E. Heretick, JD  
Thomas B. Leecost, DPM, MD  
Gary P. Miller, MD  
Juan M. Montero, II, MD  
Robert P. Nirschl, MD  
Sue Ellen B. Rocovich, PhD, DO  
Clarke Russ, MD  
Kenneth J. Walker, MD  
Jerry R. Willis, DC

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

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Barbara Matusiak, MD, Medical Review Coordinator  
Karen Perrine, Deputy Executive Director of Discipline  
Robert Nebiker, Director, DHP  
Gail Jaspen, Deputy Director, DHP  
Elaine Yeatts, DHP Senior Policy Analyst  
Emily Wingfield, Assistant Attorney General  
Colanthia Morton Opher, Recording Secretary

**OTHERS PRESENT:** Bonnie McQuaid, RRT, Chair, Respiratory Care Advisory Board  
Barbara Gallagher, OT, Chair, Occupational Therapy Advisory Board  
Jan Wilcox, DO, Edward Via School of Medicine  
Claudette Dalton, MD University of Virginia School of Medicine  
Diana Houle, PA, Vice-Chair, Physician Assistants Advisory Board  
Mike Jurgensen, Medical Society of Virginia  
Elizabeth Carter, PhD, Executive Director, Board of Health Professions  
Stefan Cox, Whitehead Consulting

**INTRODUCTION OF NEW BOARD MEMBER**

Dr. Harp introduced Alvin Edwards, M.Div., Ph.D., citizen member, who replaced Rev. LaVert Taylor effective January 22, 2004. Dr. Harp also gave special acknowledgments to Dr. Bell and Dr. Willis and expressed the board’s concern and good wishes for their personal circumstances.

**ADOPTION OF AGENDA**

The agenda was amended to include the adoption of procedural guidelines for case management. Dr. Russ moved to adopt the amended agenda. The motion was seconded and carried.

**PUBLIC COMMENT ON AGENDA ITEMS**

There was no public comment.

**APPROVAL OF MINUTES OF JANUARY 22, 2004**

Dr. Russ moved to approve the minutes of the Full Board dated January 22, 2004. Dr. Walker requested a correction to the report from the Department of Health Professions, page 003 of the agenda package, from South West Virginia to Southwest Virginia to accurately reflect the area covered by the Prescription Drug Monitoring Program. The motion was seconded and carried.

**REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR**

President – Dianne Reynolds-Cane, MD

No report.

Vice President – Carol Comstock, RN

No report.

Secretary/Treasurer

As the office of Secretary-Treasurer has been vacant since Rev. Taylor’s departure, Dr. Harp presented the revenue and expenditures summary and reported that finances are within budget for fiscal year 2004. Only one item, express services, is over the annual budget limit. Dr. Harp pointed out that for the entire fiscal year the board is at 58.55% of the budget.

Executive Director

Dr. Harp referred to the March Revenue and Expenditures Summary and advised that the total revenue for March was approximately \$1 million, which reflects the renewal year for MDs, DOs, DCs, DPMs, and OTs. The Board’s expenditure was \$371,000 and the net for March was \$628,000 in the black. The \$650,000 transfer to the Department of Health to support the medical scholarship program has not been settled for the 2004-2006 biennium.

Dr. Harp reported that the board is split on the use of laptops. He advised that board staff strongly recommends the use of laptops on selected disciplinary cases. Karen Perrine went into more detail about what would be considered beneficial use of laptops in disciplinary cases. Dr. Russ would like the board to consider using updated wireless technology that uses broadcasting. No vote was taken on this issue.

Dr. Harp reported that the last paper edition of the board brief will be going out before the June 24, 2004 board meeting. A sample of the notification note card will be included in the newsletter to apprise the licensees that the board will no longer mail out paper copies and that the newsletter can be obtained via the internet or by requesting one to be mailed.

Dr. Harp reported that in compliance with HB2318 the Joint Commission on Health Care is currently doing a study on the impact of the expansion of prescriptive authority of Physician Assistants. He advised that a similar study has been completed for Nurse Practitioners, and as a result more data will be collected. Dr. Harp advised that board staff has submitted all the information requested by the analyst from the Joint Commission including statistics on the small number of discipline cases. The study is slated to be completed by early May 2004.

Dr. Harp reported that as a result of HB856 which expands the prescribing authority of optometrists to Schedules III-VI, Dr. Reynolds-Cane has appointed two ophthalmologists to serve on the TPA Formulary Committee. They are Winston Trice, MD of Richmond and Craig Hensle, MD of Woodbridge.

Dr. Harp reminded the Board that the Federation of State Medical Boards meeting would begin April 29, 2004. Karen Perrine and Renee Dixon will be attending the AIM meeting for Executive staff on April 28, 2004. Dr. Reynolds-Cane will be attending the House of Delegates meeting on May 1, 2004 as the voting delegate.

Dr. Harp brought to the attention of the board the potential for the appointment of as many as eight new board members for July 1, 2004. He encouraged those that remained on the board to step forward and provide leadership to the new appointees.

## **COMMITTEE REPORTS**

### Executive Committee – Dr. Reynolds-Cane

Dr. Beaver moved to accept the minutes of the Executive Committee dated March 12, 2004. The motion was seconded and carried.

### Legislative Committee – Ms. Comstock

Ms. Comstock moved to accept the minutes of the Legislative Committee dated February 13, 2004. The motion was seconded and carried.

#### Credentials Committee - Dr. Allen

Dr. Harp, in Dr. Allen's absence, recommended that the minutes of the Credentials Committee dated January 22, 2004 and March 10, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Physician Assistants – Erwin Fender, PA

Diana Houle, PA, Vice-Chair of the Physician Assistant Board recommended that the minutes of the Physician Assistant Advisory Board dated February 12, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Occupational Therapy – Barbara Gallagher, OT

Barbara Gallagher, OT, Chair of the Occupational Therapy Board recommended that the minutes of the Advisory Board on Occupational Therapy dated February 11, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Respiratory Care – Bonnie McQuaid, RRT

Bonnie McQuaid, RRT, Chair of the Respiratory Care Board recommended that the minutes of the Advisory Board on Respiratory Care dated February 11, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Acupuncture – Ms. Forman

Dr. Harp, in Ms. Forman's absence, recommended that the minutes of the Advisory Board on Acupuncture dated February 10, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Radiologic Technologists – Ms. Heffernan

Dr. Harp, in Ms. Heffernan's absence, recommended that the minutes of the Advisory Board on Radiologic Technology dated February 10, 2004 be accepted. The motion was seconded and carried.

#### Advisory Board on Athletic Training – David Pawlowski

Dr. Harp, in Mr. Pawlowski's absence, recommended that the minutes of the Advisory Board on Athletic Training dated February 12, 2004 be accepted. The motion was seconded and carried.

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

Dr. Bettini moved to accept the minutes of the Committee of the Joint Board of Medicine and Nursing dated February 18, 2004. The motion was seconded and carried.

### Ad Hoc Committee on the Promulgation of Professional Ethics – Dr. Reynolds-Cane

Dr. Edwards moved to accept the minutes of the Ad Hoc Committee of the Board of Medicine on Ethics dated March 12, 2004 and April 9, 2004. The motion was seconded and carried.

### **OTHER REPORTS**

#### Board of Health Professions - Dr. Reynolds-Cane

Dr. Edwards moved to accept the minutes of the Board of Health Professions dated January 12, 2004. The motion was seconded and carried.

#### Assistant Attorney General – Emily Wingfield, AAG

Ms. Wingfield stated that there had been no new lawsuits brought against the Board of Medicine since the January 22<sup>nd</sup> meeting and in the one case pending, the board was successful at the circuit court level; however, the judge left the injunction against reporting in place. Ms. Wingfield along with Mr. Casway, has taken steps to move the process along in a positive manner.

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

Mr. Nebiker announced that the Department of Health Professions has implemented online renewals for licensees and the process has done well over the last 4 months. In addition, for physicians that are renewing online, we are getting about 50% response rate on the survey being conducted at the request of the deans of the medical schools. The process of handling renewal notices is currently being revised. Mr. Nebiker expects that the online renewal rate will increase, and the revised process will allow for the collection of email addresses of licensees, which would not be disclosed under FOIA. Mr. Nebiker notes that the collection of email addresses will allow the boards the ability to disseminate newsletters and send broadcast information in a cost efficient manner.

Mr. Nebiker advised that all board members will be receiving an email introducing a new newsletter named “DHP News”. This newsletter will contain information geared for board members and staff.

Mr. Nebiker noted that in the year 2000, the Department established standards for the resolution of cases. At that time the Board of Medicine’s rate of compliance was at 13%, in 2001 it doubled to 27%, and for the quarter that ended March 31, 2004, the rate of compliance shot up to 60%. He commends the board staff, board members, investigators, and APD staff for the remarkable turnaround in the timely processing of cases. Mr. Nebiker states that this information will be made available to the public on the website beginning in May, and pointed out that this kind of information will be included in the new DHP newsletter. Dr. Harp advised that he expects the board will reach 95% compliance given the addition of Dr. Matusiak and the anticipated addition of another case manager to assist Renee Dixon.

Dr. Russ asked for a change to the renewal notice that would help with obtaining pertinent information prior to disciplinary proceedings. Mr. Nebiker advised that this kind of questionnaire had been done approximately five years ago and because people didn't answer the questions or follow up, it became an expensive undertaking with little yield, therefore the department dropped it. Ms. Perrine commented for consideration that there is an obligation on the part of the practitioner to disclose felony convictions on the Virginia Profile and the discipline unit of the board is actively monitoring that site for follow up. Ms. Perrine also pointed out that under §54.1-2909 the Board can fine individuals for not meeting the reporting requirement. Ms. Perrine stated that if pertinent information is obtained at an informal that was not reported, the Board could take the information and notice the licensee for a subsequent informal conference on the non-reporting of required information. Mr. Nebiker advised that a change to capture disciplinary information from the renewal notice is feasible but pointed out that paper collection could be more problematic.

#### Podiatry Report - Dr. Leecost

Dr. Harp, in Dr. Leecost's absence, advised there was no report.

#### Chiropractic Report - Dr. Willis

No report.

### **NEW BUSINESS**

#### 1. Status of Regulations

Ms. Yeatts provided a chart reflecting regulatory actions and informed the Board that final regulations regarding the fee increase, which replace the emergency regulations currently in effect, are in the Governor's office pending approval for publication. The board will need to have approval by May 26, 2004 to meet statutory deadline to replace the emergency regulations within one year.

Ms. Yeatts explained that the acceptance of applicants from a candidacy program for acupuncture is the first fast track regulation that the agency has undertaken, and it has gone well. This regulation will become effective on April 26, 2004.

The other regulations listed on the chart are in process and do not require any action by the board at the time.

#### 2. Ad Hoc Committee on Regulations for Ethical Standard of Conduct

Ms. Yeatts provided a timeline on this issue. It was initially presented to the Executive Committee in April 2003 and at that time Board counsel advised the board not to adopt the code of any national organizations. In June 2003, the board voted to proceed with a NOIRA. Since June 2003, the Ad Hoc Committee on the Promulgation of Professional

Ethics has been working and the latest draft from the April 9<sup>th</sup> meeting was provided. The Ad Hoc Committee's draft regulations incorporate recommendations from the Medical Society of Virginia and others. Ms. Yeatts advised that the Ad Hoc Committee has concluded its work. The remaining steps are for the draft advisory regulations to go back to the Advisory Boards in May 2004 and have them considered for approval. All drafts must then go to the Legislative Committee on May 27, 2004. All proposed regulations will go to June 24, 2004 board meeting for approval.

Ms. Yeatts discussed the letters submitted by Dr. Joe Leming and Dr. Lawrence Monahan requesting the Board to withdraw the NOIRA under which the ethics regulations are being promulgated.

Dr. Russ moved that the Board consider withdrawal of the NOIRA. The motion was seconded by Dr. Bettini. Dr. Edwards called the question, further discussion ensued. Claudette Dalton, MD with University of Virginia School of Medicine and Mike Jurgensen with the Medical Society of Virginia provided commentary useful to the discussion. Ms. Bridge stated that she opposed the withdrawal of the NOIRA and wished to move the matter. Dr. Russ' motion to withdraw the NOIRA failed 16-1.

Ms. Yeatts advised that there is one section of the standards of professional conduct, pharmacotherapy for weight loss, which the Ad Hoc Committee looked at and determined may be outdated. Ms. Yeatts advised that the Board can choose to amend this section under the current NOIRA, since this is a NOIRA to address the professional conduct of their licensees. Dr. Walker moved to have Dr. Reynolds-Cane appoint a sub-committee of the Ad Hoc Committee on the Promulgation of Professional Ethics with expertise in the area of weight loss, to review and make recommendations to amend the regulations for consistency with current, sound medical practice. The motion was seconded and carried. Dr. Reynolds-Cane encouraged volunteers and recommendations to this committee.

Ms. Yeatts discussed the adoption of proposed regulations governing nurse practitioners. Dr. Edwards moved to adopt the proposed regulations governing nurse practitioners. The motion was seconded and carried.

Ms. Yeatts discussed those bills that survived the crossover and those enacted by the Governor that affect the board. She outlined those bills requiring the promulgation of emergency regulations by the June 24, 2004 board meeting.

### 3. Sanctions Reference Pilot Project and Manual

Mr. Nebiker advised that the department has met with the Office of the Attorney General to discuss the use of this reference document at informals and for consent orders only. Dr. Reynolds-Cane agreed with Mr. Nebiker that Emily Wingfield, board counsel had certain legal advice to provide to the board and upon a motion from Dr. Edwards, and duly seconded, the board convened in closed session pursuant to §2.2-3711 A(7) for consultation with counsel for legal advice. Further, Dr. Edwards moved that DHP staff, Board staff, Board counsel, and Advisory Board members be included in the closed

session as their presence was deemed necessary and would aid the board. The Board reconvened in open session and certified that the matters discussed in the closed session met the requirements of §2.2-3712 of the Code. Dr. Russ moved to proceed with the use of the Sanctions Reference Points in the Sanctions Reference Manual as a tool in disciplinary cases and consent orders before informal conferences. The motion was seconded and carried.

Dr. Beaver suggested the title of the reference manual be updated to remove the words "pilot study" and then moved that the board commit to the use of this tool indefinitely with the ability to re-assess and modify its approach as new factors emerge. The amended motion was seconded and carried.

4. Amendment to the Bylaws

Dr. Harp presented the proposed new language for the Board Bylaws regarding the role of the president. The new language preserves the integrity of the president's role in probable cause determinations. Ms. Yeatts suggested a structural change in the language. Dr. Beaver moved to accept the changes to the Bylaws. The motion was seconded and carried.

5. Amendment to the Bylaws of the Advisory Boards

Ms. Yeatts reported that the Advisory Board Bylaws had been reviewed by each board and are being recommended for approval. Ms. Yeatts advised that these changes are primarily for consistency between the boards. Dr. Beaver moved to accept the changes to all Advisory Board bylaws. The motion was seconded and carried.

6. Correspondence in Cases Closed Administratively

Dr. Harp discussed proposed revisions to the letters currently being sent out for cases that are closed without going forward to an administrative proceeding. Dr. Russ moved to refer to the Legislative Committee on May 27, 2004. The motion was seconded and carried.

7. Adoption of FSMB Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office as a guidance document

Dr. Harp discussed the guidelines which address the treatment of opioid addiction in the medical office. This issue was referred by the Board in January 2004 to the Legislative Committee, which, after review, recommended the document for adoption by the Board. Dr. Russ moved to adopt the FSMB Model Policy Guidelines for Opioid Addiction Treatment in the Medical Office as a guidance document. The motion was seconded and carried.

8. Comment on proposal by Board of Pharmacy to amend regulations on time limit for refills of Schedule VI drugs

Ms. Yeatts advised the board that a NOIRA had been issued by the Board of Pharmacy in response to a petition for rulemaking; the proposed action would be to amend the regulations on the refill authorization of Schedule VI drugs from two years to one year. Dr. Russ moved that the Board of Medicine go on record as opposing the amendment to the Board of Pharmacy's regulations to reduce the two year limit to one year on refills for Schedule VI drugs. The motion was carried and seconded. A letter will be crafted and sent to the Board of Pharmacy stating the Board's stance on this matter.

9. Licensing Report

- a. **On-line renewals** – Dr. Harp advised the board that 25% of its licensees renewing this year have renewed on-line.
- b. **CE Audits** – Dr. Harp stated that staff would like the board to consider sending second letters to 86 licensees further requesting appropriate documentation; allowing this procedure will hopefully keep a significant number from going into the disciplinary system. Dr. Russ suggested giving an additional grace period until the next renewal period in 2006. Dr. Willis stated that an additional grace period is unnecessary. Dr. Reynolds-Cane suggested waiting until this issue has been discussed by the appropriate committee before a decision is made. Ms. Wingfield advised that the Board could consider attaching a late completion fee to encourage timely completion of this requirement. Ms. Yeatts advised that this would require regulatory action and suggested setting up a process that lays out a grid that would offer a consent order or a CCA. Dr. Russ withdrew his motion and then made a substitute motion to refer to the Legislative Committee for review. He also suggested that the finished CE Audit report be published in the next Board Briefs with the information that the Board is considering appropriate disciplinary action for those who do not comply. The motion was seconded and carried.
- c. **Iowa Board of Medical Examiner's Proposal at the 2004 FSMB Meeting**  
Dr. Harp advised that Dr. Reynolds-Cane will be attending FSMB as the voting delegate on May 1, 2004 and asked that the board give her guidance on how she should vote on this issue. Dr. Russ moved that Dr. Reynolds-Cane support the motion by the Iowa Board of Medical Examiners at the House of Delegates. The motion was seconded and carried.

10. Practitioner Information Report

Dr. Harp reported that 98% of licensees have complied with the mandatory requirement for completing the profile and 95% with completing ECI. Dr. Harp advised that as per the instructions of the board, Practitioner Information has been sending courtesy letters to those identified having information that should be updated. Approximately 75% of those receiving letters remedied the matter.

11. Discipline Report

Karen Perrine reported that from January 2004 to March 2004 the Board received 476 cases and closed 522 cases. Ms. Perrine stated that there about 1175 regular cases open and 800 profile cases open. The profile cases are being prepared for CCAs. Dr. Russ moved that a disciplinary report be generated for the last 10 years to include a graph to capture progress of the board caseload and case resolution. He would like for this report to be available at the June 24<sup>th</sup> board meeting. The motion was seconded and carried.

Dr. Russ moved to adopt guidelines to expedite to formal proceedings to reduce the time period for processing cases. The motion was seconded. After a lengthy discussion, Dr. Montero moved to table the motion. Dr. Russ withdrew his previous motion. Board staff noted the suggestions of the board members regarding the scheduling concerns and will take steps to refine the process.

12. Report of the Nominating Committee

Dr. Beaver reported that the Nominating Committee met on April 22<sup>nd</sup> and nominated Kenneth Walker, MD as President, Thomas Leecost, DPM, MD as Vice-President, and Jerry Willis, DC as secretary/treasurer. Dr. Cothran moved to accept the slate of the Nominating Committee. The motion was seconded. Dr. Montero moved to close the nominations for this committee. The motion was seconded and carried. The original motion to approve the slate of officers for next year then carried.

13. Next Regularly Scheduled Board Meeting

The Board of Medicine will meet at 8:30 a.m. on June 24, 2004, at the Department of Health Professions, 6603 West Broad Street, 5<sup>th</sup> Floor, Richmond, Virginia.

14. Adjournment

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

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Dianne Reynolds-Cane, MD  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Recording Secretary