

VIRGINIA BOARD OF MEDICINE EXECUTIVE COMMITTEE MINUTES

Friday, November 19, 2004 Department of Health Professions Richmond, VA

- CALL TO ORDER:** The meeting of the Board convened at 8:13 a.m.
- MEMBERS PRESENT:** Thomas Leecost, DPM, President
Carol Comstock, RN
Juan Montero, MD
Jerry Willis, DC
Stephen Heretick, JD
- MEMBERS ABSENT:** Christine Ober Bridge
Malcolm L. Cothran, Jr., MD
Gary P. Miller, MD
- STAFF PRESENT:** William L. Harp, MD Executive Director
Kate Nosbisch, Deputy Exec. Director of Practitioner
Information
Ola Powers, Deputy Executive Director of Licensure
Karen Perrine, Deputy Executive Director of Discipline
Robert Nebiker, Director, DHP
Elaine Yeatts, DHP Senior Policy Analyst
Emily Wingfield, Assistant Attorney General
Colanthia Morton Opher, Recording Secretary
- OTHERS PRESENT:** William Walker, MD, President, Virginia Society of Physical
Medicine and Rehabilitation
David Drake, MD, Professor of PM & R, MCV
Paul Rein, DO, Member of the Ad Hoc Committee on Office-
Based Anesthesia
Scotti Russell, Executive Director, Board of Pharmacy

Adoption of Agenda

Dr. Willis moved to adopt the agenda. The motion was seconded. Mr. Heretick moved to add FSMB – CDC pilot program as item #11 on the agenda. The motion was seconded and carried.

Public Comment on Agenda Items

Dr. William Walker and Dr. David Drake addressed the Board with their concerns regarding the office-based anesthesia regulations and the language that appeared to limit the performance of major conductive blocks to anesthesiologists and nurse anesthetists.

Approval of the March 12, 2004 Minutes

Ms. Comstock moved to accept the minutes of March 12, 2004. The motion was seconded and carried.

Regulatory Actions

Adoption of Proposed Regulations

- ♦ 18 VAC 90-30 Regulations Governing the Licensure of Nurse Practitioners

Ms. Yeatts advised the Board that the Committee of the Joint Boards of Medicine and Nursing recommended the change to clarify that in addition to a graduate degree in nursing, a degree in the appropriate nurse practitioner specialty would be accepted.

Mr. Heretick moved to approve the regulations as final regulations with the amendment in 18VAC90-30-80 A2. The motion was seconded and carried.

- ♦ 18 VAC 85-15-10 et seq. Delegation to An Agency Subordinate

Ms. Yeatts reported that the Legislative Committee presented proposed language for the definition of "student loan" for the purpose of clarification.

Dr. Montero moved to adopt the proposed regulations. Ms. Yeatts reminded the Board that the emergency regulations currently in place will be in effect until August 1, 2005. The motion was seconded and carried.

- ♦ §18 VAC 85-20-280 Fast-Track Regulations for Profile Reporting

Ms. Yeatts advised that the current reporting requirements do not include adverse actions by certain entities be reported to the Practitioner Information System within 30 days. Ms. Yeatts pointed out that the requirement to report is currently in the law but not further delineated in regulation in terms of the timeframe for reporting. The proposal to fast-track this change was suggested.

Ms. Comstock moved to adopt the fast-track regulation process to amend §18VAC85-20-280 to include the 30 day reporting requirement (consistent with the law) of adverse action taken by certain entities. The motion was seconded.

Dr. Leecost suggested that clarification of reportable disciplinary actions be provided to assist practitioners with reporting requirements. Ms. Nobsch pointed out that information is reported to the Board by the National Practitioners Data Bank and that a very proactive approach is taken by the Board. If there is an item that should be on the Profile based on the current law and regulation and the practitioner has not reported it, a courtesy letter is sent to the practitioner. Ms. Nobsch also stated that if a practitioner reports an incident that does not need to be reported, the practitioner is sent a letter advising that it can be removed from the profile. Ms. Nobsch noted that practitioners could change everything on the profile with the exception of Virginia licensing information and Virginia disciplinary Notices and Orders.

The motion carried unanimously.

Comment on Proposed Regulations

♦ §18 VAC 110-0-320 Refilling of Schedule III through VI Prescriptions

Ms. Yeatts provided background and updated status of this amendment. Ms. Yeatts advised that the Board of Medicine had previously voted not to support the change in the regulation, as reflected in a report to the Department of Planning and Budget (DPB). DPB suggested that the Board of Pharmacy re-approach the Board of Medicine to reach a compromise. The regulations, as written, have been approved by the Secretary of Health and Human Resources and are currently in the Governor's office. Ms. Russell, Executive Director for the Board of Pharmacy, suggested that a potential compromise could be a default limitation of one year unless the prescriber specifically authorizes refills for two years.

Dr. Montero moved to recommend to the Board of Pharmacy to consider the compromise/alternate language as presented by Ms. Russell. The motion was seconded and carried.

Request for Rule-Making from the Physical Medicine and Rehabilitation Community

Ms. Yeatts explained that the Board had received three letters from the physical medicine and rehabilitation community that indicated the regulations on office-based anesthesia could be interpreted to prohibit the performance of a major conductive block by practitioners other than anesthesiologists and certified registered nurse anesthetists. Ms. Yeatts explained that a related issue is whether or not the monitoring requirements for use of anesthesia in an office-based setting are necessary for a major conductive block. When addressing the board, Ms. Yeatts suggested that the board consider the fast-track regulation process since the changes are non-controversial and for the purpose of clarification of the regulations.

Dr. Walker and Dr. Drake both acknowledged their comfort level with the current language regarding monitoring but still believe that the main issue is the definition of a major conductive block. Dr. Walker also noted that in regards to additional training, he questions why anesthesiologists are excluded for meeting the continuing education requirement. Dr. Rein later addressed the board regarding the intent of the language the Ad Hoc committee developed stating that he did not feel that the definition of major conductive block was an issue. He suggested developing a finite list of major and minor conductive blocks.

Dr. Harp advised that Dr. Clougherty, who was part of the Ad Hoc Committee, stated that major conductive blocks performed for surgical procedures should be administered by an anesthesiologist or a CRNA.

Ms. Yeatts suggested that to be consistent with Dr. Clougherty's statement, a sentence be added to say that a major conductive block performed for a surgical procedure shall only be administered by an anesthesiologist or CRNA. A major conductive block performed for diagnostic or therapeutic purposes may be performed by doctor qualified by training and scope of practice and a CRNA.

Dr. Montero moved to propose that by the fast-track process, an amendment to regulations §18VAC 85-20-330 to add section B to read as suggested by Ms. Yeatts. The motion was seconded and carried with Ms. Comstock opposing. Ms. Wingfield asked that this be noted as a clarifying statement and not a change in regulation.

Review of Legislation for the 2005 Session of the General Assembly

Ms. Yeatts advised that Mr. Nebiker had been given the authority to acquire patrons for these bills. There is no action required on these items, they are being provided for informational purposes only.

- ◆ Removal of Clinical Psychology from the Board Member Nomination Process §54.1-2912
- ◆ Unprofessional Conduct Section to Include License Applicants §54.1-2914
- ◆ Addition of Unlicensed Practice to Unprofessional Conduct Section §54.1-2914
- ◆ Athletic Trainers Possession and Administration of Epinephrine and Topical Schedule VI's §54.1-3408
- ◆ Health Care Professionals Accompanying Sports Teams to Virginia §54.1-2901
- ◆ Compounding in Physicians' Offices §§54.1-3401, 54.1-3410.2 and 54.1-3420.2
Compounding law adopted in 2004. Ms. Yeatts advised that the drafted language submitted by Ms. Russell allows the practitioner to do certain types of compounding, supervise a pharmacy technician to do the compounding, central compounding, etc. The suggested amendments both address current practice and protect the public.
- ◆ Prescription Monitoring Program §§54.1-2519-54.1.2525, 54.1-3434.1, 54.1-2523.1
This legislation was originally introduced by Senator Wampler who advocated for this program in Southwest Virginia. It has become apparent that the program will be more successful if it is statewide and includes II, III, IV and V drugs. Ms. Yeatts noted that the current law is tied to federal funding and this bill will take away that limitation and allow other funding (i.e. General Funds) to be used.

Ms. Yeatts also advised that there is a recommendation from the Governor's Work Group on Rural OB care for a pilot project in obstetrics that will remove the requirement for physician supervision of nurse practitioner midwives. There may also be legislation to license lay midwives under the Board of Medicine.

Report from the Committee of the Joint Boards of Nursing and Medicine

Dr. Harp advised that this report was provided for informational purposes and discussion.

Dr. Leecost led a discussion of the supervision of nurse practitioners by podiatrists. He advised that the American Association of Nurse Anesthetists list of practitioners that can supervise

CRNAs includes podiatrists but Virginia does not currently allow this. He also pointed out that current regulation may preclude certain practitioners from performing duties on their patients in hospitals. Ms. Yeatts explained the current statutory and regulatory schemes for podiatrists using the services of CRNAs, which do not include authority for a podiatrist to serve as the supervising physician of a CRNA. Dr. Leecost asked that this regulation be looked at carefully and consideration be given to podiatrists serving as supervisors.

Dr. Willis moved to issue a NOIRA to consider changing the current regulations to include podiatrists as practitioners that can supervise CRNAs. The motion was seconded and carried

Ms. Yeatts noted to the Board that this recommended change would also need to be adopted by the Board of Nursing since regulations for nurse practitioners must be jointly adopted.

Disciplinary Approach to Continuing Education Audit

Ms. Perrine reviewed the motion on the results of the continuing education audit from the October 14, 2004 Board meeting. At that meeting, the Board voted that practitioners who were not in compliance by their own admission be offered a CCA, with a violation and completion of CE, and be included in the next CE audit. Further, those practitioners who had responded partially to the audit request will be referred for an informal conference.

Ms. Perrine advised that based on further review of the records, staff recommends that a practitioner, in either category, who renewed or will renew this year and attested to completion of CE be requested to provide their CE form and documentation for 2004 as part of the CCA, rather than wait for the next audit.

Also, as some practitioners have completed the required CE, it would not be necessary to require the CE as part of the CCA, as previously voted. Ms. Perrine recommended that the Board President be delegated the authority to make changes necessitated by the facts, evidence, or circumstances when offering a CCA within the parameters approved. For example, the Board president would determine which violations to include in the CCA.

Dr. Leecost stated that he felt comfortable in determining how to proceed and what to include, but requested some discussion and input from members of the committee regarding CE and CCAs. Several members expressed the opinion that when the Board had information to show that a practitioner was "dishonest" with the Board; the matter should be referred for an IFC, and not be offered a CCA.

Based on the discussion, Ms. Perrine recommended that the motion state that when the information in the file indicates that the licensee knew or clearly should have known that he/she didn't have the requisite CE hours but attested to such completion anyway, then Dr. Leecost would send to an IFC. Otherwise, a CCA will be offered, with violation (determined by president), completion of CE if not done, and then 2004 attestation be verified. The motion was seconded and carried.

Mechanisms for Assessing Compliance with Physician-Physician Assistant Relationship

Dr. Harp discussed the letter from the Medical Society of Virginia summarizing their concern about the relationship between physicians and physician assistants. He advised that the Legislative Committee suggested the Board compile an FAQ to be placed in the newsletter. Ms. Powers advised that, in addition to licensure, a PA must submit for approval from the Board an application to practice that includes a list of duties (protocol), what types of supervision that will be given, etc. prior to beginning employment.

Dr. Harp wanted to acknowledge the existence of the performance documentation required between the physician and PA that must be kept on file at the practitioner's office for review by the Board. Ms. Yeatts stated that some of the confusion seemed to lie in which forms are to be completed and maintained by the Board and/or the physician.

Dr. Willis moved that the issue be forwarded to the PA Advisory Board for review of the forms and applications. The motion was seconded and carried.

Prescribing Conference

Dr. Harp advised that after the successful Prescription Monitoring Program Conference October 7 & 8, 2004, Board staff suggested that a joint educational conference with the Board of Pharmacy, DEA, and DHP be offered to physicians. The possibility of offering Category I CME credits was also suggested.

Dr. Montero moved to support such an educational program to address prescribing issues as discussed. The motion was seconded and carried.

Letter to DHP Regarding Athletic Trainers and Emergency Contact Information

Dr. Harp advised that the letter was being presented for informational purposes only. Mr. Nebiker advised that a proposal for fast-track regulation has been filed.

Approval of Single Modification to Sanctioning Reference Guidance Document 85-11 Sanctions Reference

Ms. Perrine advised that all the appropriate worksheets have been updated to reflect the current priority A, B, C, D system.

Dr. Montero moved to approve the revised guidance document. The motion was seconded and carried.

FSMB-CDC PILOT PROJECT

Dr. Harp advised that FSMB had approached the Board regarding participation in a pilot program with the CDC to gather contact information to be used to notify providers in the event of a public health emergency.

Dr. Harp advised that in March 2002, SB 59 required the Board to collect emergency contact information from profiled practitioners to be used in the event of a public health emergency only, but statute does not specify to whom this information can be distributed. Dr. Harp advised the

law apparently does not prohibit the Board from participating with CDC, but agreements with FSMB and CDC would need to be in place to ensure that this information is used consistent with our laws.

Dr. Montero moved to have Ms. Wingfield, AAG review the documentation for consistency with our laws and if acceptable, the Board would approve and set in motion the terms of the contract for the Board's review and approval. The motion was seconded and carried.

Announcements: Dr. Harp reminded the Board of the FSMB's regional seminars and their continuing competency summit that will be held in March 2005.

Next Scheduled Meeting: January 21, 2005

Adjournment: With no other business to conduct, the meeting adjourned at 11:35 a.m.

Thomas Leecost, DPM
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Recording Secretary