VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE

MINUTES

May 27, 2004

The Legislative Committee chaired by Carol E. Comstock, RN met on Thursday, May 27, 2004 at 8:30 a.m., at the Department of Health Professions ("DHP"). A quorum was present.

MEMBERS PRESENT: Carol E. Comstock, RN, Vice-President, Chair
Christine Ober Bridge
Malcolm L. Cothran, Jr., MD
Thomas B. Leecost, MD, DPM
Robert Nirschl, MD

MEMBERS ABSENT: Robert J. Bettini, MD
Stephen E. Heretick, JD

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

GUESTS PRESENT: Dianne Reynolds-Cane, MD, President, Board of Medicine
Bonnie McQuaid, RRT, Chair, Respiratory Care Advisory Board
Mike Jurgensen, Medical Society of Virginia
Scott Johnson, Medical Society of Virginia
Brian Walsh, RRT
Michael Woods, Troutman Sanders
Elizabeth Hancock, Macaulay and Burtch
Karen Talbot, Macaulay and Burtch
G. Siemering, DVM, Board of Veterinary Medicine
Susan Ward, VHHA
Leslie Herdegen, Virginia Law and Government Affairs

APPROVAL OF MINUTES OF FEBRUARY 13, 2004

Dr. Cothran moved to approve the minutes of February 13, 2004 meeting. The motion was seconded, and carried unanimously.

ADOPTION OF AGENDA

The agenda was amended to include Adoption of Guidance Document for Nurse Practitioners. Dr. Cothran moved to adopt the amended agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Brian Walsh, RCP addressed the Virginia Society for Respiratory Care legislative proposal for 2005 that would allow respiratory care practitioners to administer drugs in settings outside the hospital. Mr. Walsh requested that the Board support the proposed law stating that it would allow the full range respiratory care services to individuals outside the hospital setting, including but not limited to, physician's offices, nursing homes, asthma camps, and transport teams. The chair requested Mr. Walsh address this topic at the discussion of Agenda item #5 – Proposed legislation for 2005.

1. Proposed Regulations

Ms. Yeatts presented recommendations on proposed regulations for standards of practice/professional ethics including the available draft from the Ad Hoc Committee and subcommittee on – pharmacotherapy for weight loss and the Ad Hoc Committee on Vitamins, Minerals and Supplements. The vote of each discussed regulation was as follows:

A. **18VAC85-20-22 – Patient Records** – Ms. Comstock moved to amend subsection (C) to add <u>coincident with care</u> in the appropriate place to further define the word "timely". The motion was seconded. Dr. Reynolds-Cane raised a concern of how this addition may adversely affect the proper delivery of care. After discussion, Dr. Nirschl called the question. Ms. Comstock's motion failed 4 to 1. Dr. Nirschl moved to amend subsection (D1) to read <u>Patient records shall be maintained until the age of 18 or age of emancipation, which ever comes first, at a minimum of six years no matter how old the child was at last encounter.</u> The motion was seconded and carried unanimously.

B. **18VAC85-20-23 – Confidentiality** - Ms. Bridge moved to amend the regulation to state <u>A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a patient. A breach of confidence beyond the control of the practitioner or required by applicable law shall not be considered negligent or willful</u>. The motion was seconded and carried unanimously.

C. **18VAC85-20-24 – Practitioner-patient communication; termination of relationship -** Dr. Cothran moved to amend (A2) to state, <u>Practitioners shall present information</u>

relating to the patient's care to the patient or his legally authorized representative… The motion was seconded and carried unanimously. Dr. Cothran then moved to add language as found in the Advisory Boards proposed ethical regulations as (A4) which states, Practitioners shall obtain informed consent from patients involved in research activities. Patients should be fully informed about potential risks involved and the result that is hoped to be attained and should be given the opportunity to refuse professional services or involvement in research activities. The motion was seconded and carried unanimously.

D. **18VAC85-20-30 – Advertising** – Ms. Bridge moved that the first sentence of subsection (E) be amended to replace the word "publish" with "advertise". The motion was seconded and carried unanimously.

E. **18VAC85-20-40** – **Vitamins, minerals and food supplements -** Ms. Yeatts advised that this section of the regulations had been reviewed thoroughly by an ad hoc committee that included a bariatric physician and one with expertise in nutrition. Dr. Leecost moved that the Committee accept the draft language recommended by the ad hoc committee with an amendment to subsection (B) to remove the word "prescribed". Dr. Leecost also requested that staff include appropriate wording to capture "recommendation and direction". The motion was seconded but not carried. After discussion, Dr. Leecost moved to accept the recommendations of the ad hoc committee and also to have staff draft language, to be available on the June 24, 2004 meeting, to capture three distinct elements; recommendation, prescribing and direction by a physician. The motion was seconded and carried unanimously. Dr. Nirschl requested that the language be highlighted to remind everyone of the changes.

Ms. Bridge moved to accept the proposed language of 18VAC-85-20-40; the motion was seconded and carried unanimously.

F. **18VAC85-20-90 – Pharmacotherapy for weight loss -** Dr. Cothran moved to amend subsection (B1b) as follows …If the drug to be prescribed could adversely affect cardiac functions, the physician shall review the results of an electrocardiogram performed and interpreted within 90 days of initial prescribing for treatment of obesity. The motion was seconded and carried unanimously.

Dr. Cothran then moved to accept the substitute language on 12A of the draft for current language on page 10 of the draft. The motion was seconded and carried unanimously.

G. **18-VAC-85-20-100 – Sexual contact -** Dr. Leecost moved to restructure subsection (D) and move to a separate paragraph the reference to contact between a medical supervisor and trainee. Further, the word "child" should be added to the definition of key third party to address the situation of an adult child of a patient. The motion was seconded and carried unanimously.

H. **18VAC85-20-25 – Practitioner responsibility** - Dr. Cothran recommended that an ad hoc committee be appointed to address the regulations and current problems relating to the completion of a death certificate. Mr. Nebiker suggested that the committee include representatives from the Department of Health, Board of Funeral, and the Medical Examiner's

Office and any party who may have an interest in this regulation. The motion was seconded and carried unanimously.

I. **18VAC85-20-80 – Solicitation or remuneration in exchange for referral -** Dr. Reynolds-Cane suggested that the Board consider the addition of language or another practitioner to be added to address the solicitation or remuneration in exchange for referral. After discussion, Dr. Reynolds-Cane withdrew her suggestion.

Dr. Nirschl moved to recommend to the Board the adoption of the standards of practice regulations for Chapter 20 as amended by vote of the committee today. Further, these amendments will also be included in regulations for all Advisory Boards. The motion was seconded and carried.

Advisory Board Regulations – Standards of Professional Conduct

Ms. Yeatts advised that the six advisory boards adapted language from both their current and the draft proposed regulations for Chapter 20 and extracted portions that seemed applicable to their profession.

Chapter 40 – Respiratory Care – Dr. Nirschl moved to recommend to the Full Board adoption of Chapter 40 as amended by changes to Chapter 20 voted on today. The motion was seconded. After discussion, Dr. Cothran amended the motion to include the paragraph from 18VAC85-20-25 (B) – Advocating for patient safety or improvement in patient care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited… into §18VAC85-40-88 and for each of the other Advisory Board's regulations. The amendment to the motion was seconded and carried unanimously.

Ms. Comstock the asked for a vote on Dr. Nirschl's motion as amended. The motion was carried unanimously.

Chapter 50 – Physician Assistants – Dr. Nirschl moved to recommend to the Full Board adoption of Chapter 50 as amended by changes to Chapter 20 voted on today. The motion was seconded and carried unanimously.

Chapter 80 – Occupational Therapy – Dr. Leecost moved to recommend to the Full Board adoption of Chapter 80 as amended by changes to Chapter 20 voted on today. The motion was seconded and carried unanimously.

Chapter 101 - Radiological Technology – Dr. Cothran moved to recommend to the Full Board adoption of Chapter 101 as amended by changes to Chapter 20 voted on today. The motion was seconded and carried unanimously.

Chapter 110 – Licensed Acupuncturist – Dr. Cothran moved to add the language from provisions of Chapter 20 regarding 1) advertising ethics, 2) vitamins, minerals and food supplements and, 3) soliciting of referrals. The motion was seconded and carried unanimously.

Dr. Nirschl moved to recommend to the Full Board adoption of Chapter 110 as amended by changes in Chapter 20 voted on today and by Dr. Cothran's motion. The motion was seconded and carried unanimously.

Chapter 120 – Athletic Training – Dr. Cothran moved to recommend to the Full Board adoption of Chapter 120 as amended by changes in Chapter 20 voted on today. The motion was seconded and carried unanimously.

2. Emergency Regulations

Delegation to an agency subordinate - Ms. Bridge moved to recommend the adoption of emergency regulations for delegation to an agency subordinate to implement provisions of HB577 as a new chapter - Chapter 15 - which will set out the criteria for the board and the delegation of informal fact finding to a subordinate. This chapter will be applicable to all of the professions regulated by the Board of Medicine. The motion was not seconded. Ms. Bridge withdrew the motion. Ms. Wingfield suggested rewording section B of the regulation and Ms. Jaspen suggested that the delegation list not become so specific as to create additional problems for the Board.

Dr. Nirschl suggested re-wording section B by having (B1) – Cases that should not be delegated shall include the following then list 1-7 as noted in the proposal on page 39 of the agenda packet, with deletion of mandatory suspension resulting from action by… from #2 and replacing it with standard of care; also add a (B2) – Cases that may be delegated shall include the following profiling; advertising; and continuing education.

Ms. Bridge moved to accept (A) as presented in the draft regulations on page 39 of the agenda packet; (B) shall read to the effect of "Criteria for Delegation. Cases that may be delegated shall be profile, continuing education and advertising; and (C) as presented. The motion was seconded.

Ms. Comstock asked for an amendment to the motion to include the rewording of C1 to say, An agency subordinate authorized and deemed knowledgeable by the board by virtue of his training and experience to conduct an informal fact finding… The motion was seconded.

Dr. Nirschl then asked for an amendment to the original motion to include the phrase "shall be limited to" under (B) to ensure clarity and preclude anything else from being delegated. The original motion with the amendments was seconded and carried unanimously.

Written protocol for Nurse Practitioners - Dr. Cothran moved to recommend to the Full Board the adoption of emergency regulations for license of nurse practitioners to implement provisions of HB855. The motion was seconded and carried unanimously.

Implementation of the Nurse Licensure Compact Provision - Dr. Cothran moved to recommend to the Full Board the adoption of emergency regulations to implement the Nurse Licensure Compact provision. The motion was seconded and carried unanimously.

Certification of Occupational Therapy Assistants - Dr. Cothran moved to recommend to the Full Board the adoption of emergency regulations to establish certification by NBCOT for use of the protected title of OTA. The motion was seconded and carried unanimously.

3. Respiratory Care

Ms. Yeatts advised the Committee that the Petition for Rulemaking, submitted by Deborah Johnson, is requesting the inclusion of courses recognized not only by the AARC but also courses recognized by the AMA, Ms Yeatts stated that in addition to the petition the Board has received an additional 28 letters supporting this request. Dr. Cothran moved to recommend to the Full Board the adoption of emergency regulations to amend the regulations to accept AMA credits. The motion was seconded and carried unanimously.

4. Athletic Trainers

Ms. Yeatts advised that the only change from the proposed regulations §18VAC85-120 is the update of the word "certificate" to "license/licensure". Beginning July 1, 2004 licensure will be mandatory and this change will conform to the law. Dr. Nirschl moved to recommend to the Full Board the adoption of the final regulations. The motion was seconded and carried unanimously.

Ms. Bridge moved to recommend to the Full Board to accept the exempt regulations to change certification for athletic trainers to licensure. The motion was seconded and carried unanimously.

5. Proposed legislation for the 2005 Session of the General Assembly

VSRC Legislative proposal - Mr. Brian Walsh addressed the Board regarding his request for support of proposed regulations for respiratory care practitioners to have the ability to administer medications, outside the hospital setting but with the same supervision as in the hospital. Dr. Nirschl stated that there was inconclusive data presented and suggested that Mr. Walsh gather sufficient information including who is responsible for the patient, training requirements, etc., and reappear before the board at a future date. Dr. Nirschl moved to recommend to the Full Board that it not take any action at this time. The motion was seconded and carried with Dr. Cothran taking opposition.

Amendment to §54.1-2914 to include applicant - Ms. Perrine reviewed with the Committee the proposed change to §54-2914. After discussion, it was suggested that the staff add appropriate language to encompass any person the Board may consider being guilty of unprofessional conduct if the person committed any of the acts currently enumerated in the statue. Dr. Nirschl moved to recommend acceptance by the Full Board. The motion was seconded and carried unanimously.

Ms. Perrine reviewed the proposed change to §54.1-2915, to add a #7 – the commission of any act enumerated in §54.1-111. Ms. Perrine advised that it was realized in some of the disciplinary cases that individuals commit acts on the list but the current sections §54.1-2914 and 2915 may not allow those individuals to be charged for commission of those acts because

the language in the code is “violating any provision of this chapter” which means only Chapter 29. The recommendation is to include language to provide a link to allow the Board the ability to prosecute. Ms. Bridge moved to recommend the proposed amendment to the Full Board. The motion was seconded and carried unanimously.

Removal of Clinical Psychology from §54.1-2912 - Ms. Perrine discussed the proposed change to §54.1-2912. The recommendation is to strike clinical psychologist from the first paragraph since they are no longer regulated by the Board of Medicine. Dr. Cothran moved to recommend the proposed amendment to the Full Board. The motion was seconded and carried unanimously.

Radiological Technology – exemption removal for licensure - Ms. Bridge moved to recommend to the Full Board the proposed amendment to §54.1-2956-8:1 that will eliminate the current exemption for employees of licensed hospitals as a radiological technologist, thereby requiring all individuals in this profession to obtain a license to practice. The motion was seconded and carried unanimously.

Athletic Trainers – administration of controlled substances - Dr. Nirschl moved to recommend to the Full Board an amendment to §54.1-3408 to allow athletic trainers to possess and administer Schedule VI topicals and epinephrine. The motion was seconded and carried unanimously.

Dr. Nirschl moved to recommend to the Full Board an amendment to §54.1-2901 to address athletic trainers who accompany teams coming to Virginia from other states for games and/or events who do not posses a Virginia license. The motion was seconded and carried unanimously. Dr. Nirschl asked that the Board review the issue of team physicians who also accompany teams to Virginia who do not have a Virginia license and consider adding the medical profession to this code section.

#6. Review of closure letters for cases that do not move forward to proceedings or CCAs.

Ms. Perrine reviewed the proposed changes to be made to the letters currently being used by board staff to notify the source or respondent of a decision. Dr. Nirschl moved to recommend to the Full Board the letter to respondent – no violation, with the language change in paragraph one to strike “there does not appear to be a violation” to <u>the board has determined that there was no;</u> and in the last paragraph strike “there appeared to be no violation” to <u>there was no;</u> and use paragraph two as a separate enclosure. The motion was not seconded.

Ms. Wingfield advised that the Board could not legally say there is no violation unless there has been adjudication and suggests using another word besides “appear”. Ms. Bridge suggested that new drafts of the letter be developed and presented to the Board and the next meeting of the Legislative Committee July 16, 2004.

#7. FSMB’s new Model Policy on Pain Management as a guidance document

Dr. Cothran moved to recommend to the Full Board the adoption of FSMB's new Model Policy on Pain management as a guidance document for the treatment. The motion was seconded and carried unanimously.

#8. Review and comment on FSMB's Scope of Practice draft document

Ms. Perrine advised that the Federation of State Medical Boards has had a special committee to develop information regarding changes in a scope of practice for non-physician practitioners for use by medical boards when making legislative and regulatory changes. The special committee draft report *Increasing Scope of Practice; Critical Questions in Assuring Public Access and* Safety is being provided for comment only and the Board's response will be relayed to the Federation for a final report in 2005.

Ms. Comstock indicated that she had several comments regarding the document:

- The document should be circulated more widely
- She objected to use of the phrase " bypass accepted standards" in the cover memo that forwarded the report to all state medical boards (page 127) in board packet
- She noted that the report should focus more on patient safety
- She recommended that in Section III lines 39 & 40 relating to the number of practitioners affected by the expansion be deleted (page 7 of FSMB 05/04 draft)
- Also in section III under supervision, lines 27 & 28 on page 135 (page 8 of FSMB 05/04 draft) be deleted
- She recommended that Virginia not consider reimbursement enhancements for physicians and non physicians to practice in underserved areas (page 13 of FSMB 05/04 draft)

Ms. Bridge noted that the report is aimed at access to healthcare which has been a concern before the General Assembly over the last 10 years. She commented that the document needs to more reflect more clearly that this is the larger issue.

Ms. Comstock suggested that the Legislative Committee recommend that the Board indicate it's support of this document with some hesitancy about some of the language as the intent of the document is honorable. Ms. Bridge so moved. The motion was seconded and carried unanimously.

#9. Guidance Document #90

Ms. Yeatts advised that this issue was presented to the Joint Boards by clinics of the Health Department. They asked that in the case of treating sexually transmitted diseases, nurse practitioners who are licensed as women's health practitioners may include male clients as an extension of their care. Dr. Cothran moved to accept the guidance document as presented. The motion was seconded and carried unanimously.

NEXT SCHEDULED MEETING

The next meeting of the Legislative Committee is scheduled for July 16, 2004 at 8:30 a.m.

ADJOURNMENT

With no further business to discuss, the Legislative Committee of the Board of Medicine adjourned.

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Carol E. Comstock, RN
Chair

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William L. Harp, MD
Executive Director

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Colanthia Morton Opher
Recording Secretary