

VIRGINIA BOARD OF MEDICINE LEGISLATIVE COMMITTEE MINUTES

Friday, April 22, 2005

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting of the Board convened at 8:40 a.m.

MEMBERS PRESENT: Malcolm Cothran, Jr., MD, President
Christine Bridge
Carol Comstock, RN
Alvin Edwards, M.Div., Ph.D.
Suzanne Everhart, DO
Stephen Heretick, JD

MEMBERS ABSENT: J. Thomas Hulvey, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Karen Perrine, Deputy Executive Director, Discipline
Kathleen Nobsch, Deputy Executive Director, Practitioner
Information
Ola Powers, Deputy Executive Director, Licensing
Elaine Yeatts, DHP Policy Analyst
Emily Wingfield, Assistant Attorney General
Colanithia Morton Opher, Recording Secretary

OTHERS PRESENT: Scott Johnson, MSV
Michael Jurgensen, MSV
James Pickral, VPLA

ROLL CALL

Dr. Cothran asked for a moment of silence to acknowledge deceased committee member J. Thomas Hulvey, MD who passed away in March 2005.

APPROVAL OF MINUTES OF OCTOBER 29, 2004

Dr. Edwards moved to approve the minutes of the October 29, 2004 meeting. The motion was seconded and carried.

ADOPTION OF AGENDA

Dr. Edwards moved to adopt the agenda as amended with items Petition for Rulemaking and Ad Hoc for Compounding Regulations Committee Member list added as items #10 and #11. The motion was seconded and carried.

PUBLIC COMMENT

Scott Johnson, general counsel for the Medical Society of Virginia (MSV) addressed the Board regarding the implementation of competency assessments. Mr. Johnson advised that MSV suggests that a guidance document be developed for use in July 2005 and then graduate into regulations. Mr. Johnson noted that MSV is also willing to provide physicians to assist with this program as it unfolds. Mr. Johnson also provided a letter from Dr. Ellington, current President of MSV.

New Business

Legislative Report

a) Report of the 2005 General Assembly

Ms. Yeatts summarized those bills that have some relevance to the Board, also discussing those not included in the agenda package.

Ms. Yeatts advised of the following:

The dietitians' bill failed but the vote was made with the decision to send the issue to the JCHC for review and study.

HB1556 requires the Board to inform all its licensees of the protection provided in §54.1-106 – Protection from civil liabilities.

HB2237 is an amendment to the Practitioners Self-Referral Act in Virginia which makes Virginia law consistent with Federal regulations which allow a physician to refer to another practitioner who is a member of his immediate family provided the practitioner is qualified and duly licensed to provide such services.

HB2429 provides for a major expansion of the Prescription Monitoring Program that includes data collected on dispensed prescriptions of Schedule II drugs. The program will go statewide and will include Schedules II, III, and IV dispensed by nonresident pharmacies that are shipped into Virginia. This bill also gives new authority to query the program for outliers to develop parameters for the generation of a letter to address the issue of patients who may be doctor-shopping.

HB2526 now authorizes Athletic Trainers to possess and administer certain topical Schedule VI drugs and epinephrine.

HB2656 is a pilot project that authorizes the Department of Health to set up a project in a rural area where a nurse practitioner can serve low-risk pregnancy women without the supervision of a physician. The program requires specific appropriation that does not currently exist.

a) Report of the 2005 General Assembly (cont.)

HB2804 gives immunity to individuals who are required to report acts of unprofessional conduct who choose to make voluntary reports that they believe in good faith to be worthy of reporting.

b) Bills for review

Ms. Yeatts advised that the re-codification of the provisions of law relating to the standards of conduct for all the professions governed by the Board will now be located in one section of the code under §54.1-2915. Ms. Yeatts advised that another significant factor of this section allows the Board to deny licensure or refuse to admit a candidate into an examination if there is the finding of a violation of any of the provisions under this section.

Ms Yeatts advised that HB2038 adds the profession of Licensed Midwives and another advisory board to the Board of Medicine. She noted that emergency regulations will be promulgated within 280 days after the appointment of an Advisory Board. During the discussion, several board members expressed concern regarding the parameters in this law as noted on page 17 line 28 of the agenda package.

Ms. Yeatts advised that HB2524 Compounding Law is an exception in the Drug Control Act for compounding performed by an MD, DO or a person supervised by one of these two professions. The Board is required to have regulations promulgated within 280 days for the adoption of emergency regulations. Ms. Yeatts advised that this bill gives the Board the responsibility and authority to inspect the facility where the compounding occurs.

Ms. Yeatts advised that SB716 will allow Physician Assistants to practice in an emergency room setting while remaining under the supervision of the supervising physician who may not be physically present at the hospital.

c) HJR818 and HB2430

Ms. Yeatts advised in HJR818 the requirement of the Board of Medicine is to meet with other entities and report on the issues of high deductible health insurance plans and quality initiatives. Ms. Yeatts also noted that HB2430 requires the Board to jointly develop safety measures regarding quality health care services to be identified collected and disseminated. This bill will not become effective unless reenacted by the 2006 Session of the General Assembly.

d) Implementation of Competency Assessment

Ms. Yeatts advised that HB2659 requires the Board of Medicine to obtain an assessment of competency of any licensee with 3 paid claims within 10 year period. Ms. Yeatts reiterated MSV's request of the Board to consider adoption of a guidance document and then proceed with adoption of regulations.

After some discussion, Dr. Everhart moved that the Legislative Committee convene a closed meeting pursuant to Section 2.2-3711.A(7) of the Code of Virginia. The motion was seconded and carried.

Dr. Everhart moved to return to open meeting.

Having certified that the matters discussed in the preceding closed session met the requirements of §2.2-3711 of the Code, the Committee reconvened in open session.

Ms. Bridge moved that a guidance document be drafted by the staff to be presented to the Executive Committee on May 20th. The document should reflect the issues of the interpretation of the time period, assessment approach, cost and action of the Board. The motion was seconded and carried.

Schedule for 2006 Legislation

Regulatory Status Chart

Ms. Yeatts reviewed the chart of regulatory actions that would need to be adopted by the Executive Committee and Full Board in July, 2005.

Recommendation of Ad Hoc Committee on Ethics Regulations

Ms. Yeatts advised that the Ad Hoc Committee on Ethics was reconvened to review the public comments received on the ethics regulations. Ms. Yeatts noted that the comments on page 37-64 of the agenda packaged were thoroughly reviewed and recommendations made were reflected on page 65 of the agenda package. The discussion of the following generated the following motions:

- 18VAC85-20-26 – Dr. Edwards moved to adopt the changes on page 71 of the agenda package. The motion was seconded and carried.
- 18VAC85-20-28(A 2) – Practitioner-patient communication...: Dr. Everhart moved that the language be changed back to include “understandable”. The motion was seconded and carried.
- 18VAC85-20-30 (D) Advertising ethics: Dr. Edwards moved to accept the re-written language on page 68 of the agenda package. The motion was seconded and carried.
- Dr. Edwards moved to recommend the amended regulations for adoption by the Full Board in July. The motion was seconded and carried.

Approval of NOIRA – Post-graduate training

Ms. Yeatts advised that the intent of the NOIRA is to amend the regulations for graduates and former students of institutions that are not accredited to require at least one year of internship or residency within the United States or Canada. Dr. Everhart moved to recommend to the

Board the issuance of a NOIRA to proceed with the amendment. The motion was seconded and carried.

Final regulations

Dr. Edwards moved to recommend the adoption of final regulations for Certification of Occupational Therapy Assistants be made to the Executive Committee. The motion was seconded and carried.

Dr. Edwards moved to recommend the adoption of final regulations for Delegation of Informal Fact-Finding to an Agency Subordinate be made to the Executive Committee. The motion was seconded and carried.

Exempt action changes in Code cites

Dr. Edwards moved to recommend that the exempt changes to the regulations relative to amendments to 54.1-2915 be accepted by the Executive Committee. The motion was seconded and carried.

Nurse practitioners regulations

Ms. Yeatts advised these emergency regulations were jointly adopted by the Board of Medicine and Board of Nursing. Dr. Edwards moved to recommend to the Full Board the adoption of the amendment to the Nurse Practitioners regulations for consistency with the Nurse Licensure Compact and for the establishment of the written protocol to allow Nurse Practitioners to sign in lieu of the physician certain certifications. The motion was seconded and carried.

Petition from Dr. Sarrett

Ms. Yeatts advised that Dr. Sarrett is currently retired from practice and holds an inactive Virginia license. Dr. Sarrett is inquiring about those with this status having the ability to participate in a state or national emergency. After discussion, Ms. Comstock moved that the staff draft language to add to the inactive section the ability for retired licensees to be recruited in a state of emergency. The motion was seconded but not carried. Ms. Bridge amended the motion to say "drafted language to be considered by the Legislative Committee for the 2006 General Assembly to respond to this opportunity. The motion was seconded and carried.

Profile issue

Ms. Nosbisch reported that there was some confusion regarding the reporting requirements from the licensee when a claim was paid on their behalf by the insurance company. After thorough discussion, Ms. Bridge moved to recommend to the Executive Committee to issue a NOIRA to amend the malpractice reporting requirements of the Practitioner Profile regulations to address this issue. The motion was seconded and carried.

Fast-track regulations – Athletic Trainer Licensure

Ms. Yeatts noted that these regulations require current national certification be held when initially licensed and upon license renewal. Ms. Comstock moved that the amendment be accepted as recorded. The motion was seconded and carried.

Petition for Rulemaking

Ms. Yeatts distributed a letter from Dr. Stroube and his Petition for Rulemaking for informational purpose only. The petition is for the Board to consider an amendment to regulations to require that in the provision of office-based anesthesia a practitioner use an RN as a circulating nurse during the procedure.

Ad Hoc – Compounding

Dr. Edwards moved to establish an ad hoc to draft compounding regulations consistent with HB2524 to ensure that the mixing and compounding done in a practitioner's office is up to the standards that pharmacists are held to. The motion was seconded and carried. Dr. Harp provided a list of names for consideration with additional names to be submitted by the Executive Director of Pharmacy.

Announcements

Dr. Cothran apprised the Committee of his attendance at FSMB's Pain Management Symposium in Boston. He noted an item of interest and asked the members to consider having a nonvoting member of the Virginia legislature as a member of the committee. Mr. Nebiker advised that statutorily general assembly members are prohibited from sitting on boards with few exceptions.

Next scheduled meeting: August 19, 2005

Adjournment

With no further business to conduct, the meeting adjourned at 12:25 p.m.

Malcolm Cothran, Jr., MD
President

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary