

VIRGINIA BOARD OF MEDICINE MINUTES

Thursday, October 19, 2006

Department of Health Professions

Richmond, VA

CALL TO ORDER:

The meeting of the Board convened at 8:27 a.m.

MEMBERS PRESENT:

Malcolm Cothran, MD, President
Stephen Heretick, JD, Vice-President
Jane Piness, MD, Secretary-Treasurer
Sandra Anderson Bell, MD
Ann T. Burks, JD
Patrick Clougherty, MD
Claudette Dalton, MD
Valerie Hoffman, DC
Gopinath Jadhav, MD
Brent Lambert, MD
Juan Montero, MD
Robert Mosby, MD
Karen Ransone, MD
Ellen Shapiro, DPM

MEMBERS ABSENT:

John Armstrong, MD
Gen. Clara Adams-Ender, RN, MSN
Suzanne Everhart, DO

STAFF PRESENT:

William L. Harp, MD, Executive Director
Barbara Matusiak, MD, Medical Review Coordinator
Jennifer Deschenes, JD, Deputy Executive Director of Discipline
Kate Nosbisch, MS, Deputy Executive Director of
Practitioner Information
Ola Powers, Deputy Executive Director of Licensure
Elaine Yeatts, DHP Senior Policy Analyst
Emily Wingfield, Chief Deputy Director, DHP
Howard Casway, Senior Attorney General
Colanitha Morton Opher, Recording Secretary

OTHERS PRESENT:

Michael Jurgensen, Medical Society of Virginia
Becky Bowers-Lanier, ACNM
W. Scott Johnson, Medical Society of Virginia
Michele Satterland, VCNP
Dale Austin, FSMB
Beth Meixner, Chair, Advisory Board on Radiologic Technologists
Jeff Legg, PhD, MCV Radiology
Mary Ann Turner, MD, MCV Radiology
Ronald Miller, MCV Radiology

PLAQUE PRESENTATION TO DR. THOMAS LEECOST, DPM

Dr. Cothran and Dr. Harp presented a plaque to Thomas Leecost, DPM, past-president of the Board of Medicine for his years of service to the Board and to the Commonwealth. Dr. Harp expressed his gratitude to Dr. Leecost for his dedication and availability to the Board while president. Dr. Leecost expressed his appreciation for the kind words.

INTRODUCTION OF GUESTS

Dr. Harp acknowledged all the guests present and introduced Dale Austin, Senior Vice-President of the Federation of State Medical Boards. Dr. Harp advised that Mr. Austin was making the biennial visit and would address the Board later on the agenda.

APPROVAL OF THE JUNE 22, 2006 MINUTES

Dr. Ransone moved to approve the June 22, 2006 minutes. The motion was seconded and carried.

INTRODUCTION OF ELLEN SHAPIRO, DPM

Dr. Cothran introduced the new board member, Ellen Shapiro, DPM. Dr. Shapiro gave a quick overview of her education and work history.

ADOPTION OF AGENDA

Ms. Yeatts requested the addition of an agenda item as 3-B9 - NOIRA for pain management for nurse practitioners. Dr. Mosby moved to adopt the amended agenda. The motion was seconded and carried.

PUBLIC COMMENT ON AGENDA ITEMS

No comments.

REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

Dr. Cothran advised that he would be representing the Board at the Medical Society of Virginia's annual meeting in November in Williamsburg.

VICE-PRESIDENT

No report.

SECRETARY-TREASURER

No report.

EXECUTIVE DIRECTOR

Revenue and Expenditures Report

Dr. Harp advised that the Board is well within the budget.

Travel Regulations

Dr. Harp encouraged the Board members to submit travel vouchers within the 30-day guideline as noted by policy.

Dr. Harp advised that any overages above and beyond the allotment for M&IE will be at the expense of the traveler.

Dr. Harp also noted that the mileage rate for travel has increased to 44.5 cents per mile.

Three Paid Claims

Dr. Harp advised that ten physicians were identified as licensees that were subject to this law and that board staff is in the process of assisting them in finding an acceptable evaluator. Dr. Harp stated that as of today, 3 proposals and 1 completed assessment have been submitted to the Board.

Guidance document regarding suggestions from the Department of Health

Dr. Harp advised that the Advisory Board on Midwifery suggested that a guidance document be developed for newly licensed midwives to inform them of requirements of the Department of Health and Department of Social Services. Ms. Yeatts advised that these entities have been contacted and invited to participate in the workgroup.

Advisory Board of the FSMB Research and Education Foundation

Dr. Harp advised the Board about FSMB's project to convert their policy document on pain management into a manual and the invitation to participate in the process of editorial review.

Calls for Committee Appointments and Nominations

Dr. Harp remarked that the FSMB is currently seeking nominees for office and committee assignments and encouraged the Board members to consider serving.

COMMITTEE AND ADVISORY BOARD REPORTS

Dr. Piness moved that the Board accept all Committee and Advisory Board Reports as presented in the agenda packet en bloc. The motion was seconded and carried.

Dr. Harp requested that an item from the Legislative Committee minutes (Physicians signing death certificates) be extracted, discussed and voted on as a separate issue. Dr. Harp further advised that this issue was thoroughly addressed by the Legislative Committee and their recommendation to the Board was that written communication be sent to Delegate Morgan regarding the authority in this matter.

Dr. Mosby moved that a letter be sent to Delegate Morgan to address the issue. The motion was seconded and carried.

The motion to approve the remaining minutes en bloc carried.

OTHER REPORTS

Board of Health Professions

Dr. Harp introduced Mr. Casway as interim board counsel and advised that Amy Marschean will begin as Board counsel in January 2007. Ms. Yeatts advised that Ms. Marschean was counsel to the House Committee on Health and Welfare and Institutions, has worked extensively with DHP's legislation, is very familiar with our laws and regulations, and will be great counsel for the Board.

Podiatry

No report.

Chiropractic

No report.

Department of Health Professions Director

Dr. Harp noted that there was no report and advised that Ms. Ryals, DHP Director sends her regards to everyone and regrets not being able to be with the Board due to a prior commitment to the Citizens Advocacy Center.

Podiatry Report

No report.

Chiropractic Report

No report.

NEW BUSINESS:

VPMA PROPOSAL FOR ON-LINE PRESENTATION OF THE RADIOLOGIC TECHNOLOGIST – LIMITED COURSE

Ms. Beth Meixner, Chair of the Advisory Board on Radiological Technology reported that the Advisory Board had the opportunity to review the updated on-line program and recommended that it be approved as an instructional medium.

Dr. Mosby moved to approve the acceptance the on-line course for radiologic technologists - limited. The motion was seconded and carried.

DEFINITION AND SCOPE FOR RADIOLOGY ASSISTANTS (RA)

Dr. Harp introduced Jeff Legg, Ronald Miller, and Mary Ann Turner, MD, from the Medical College of Virginia Department of Radiology and said they were in attendance to support the Advisory Board's recommendation that the anticipated clinical activities of an RA fall under the current definitions of a radiologic technologist and radiological technology.

Ms. Meixner provided some history on the development of the RA profession. Ms. Meixner stated that the Advisory Board on Radiological Technology went through the information presented by MCV line-by-line, and with a few exceptions, felt the responsibilities of the RA fell within the current radiologic technologist regulations. Ms. Meixner added that for those duties that were questionable, the RA would be directly supervised by a radiologist.

Several board members expressed concern about the level of responsibility anticipated of RAs and suggested that this profession be looked at as separate from radiologic technology as currently defined in law. Ms. Yeatts reminded the members that the Board does not have the statutory ability to create a new profession.

Dr. Dalton moved that the Board consider the definition of a Radiology Assistant and their delineation of duties to exceed the practice of radiological technology. The motion was seconded.

Dr. Turner addressed the Board and advised that as a point of education, under the supervision of a radiologist, RAs employed around the state already perform most of these duties and that this recommendation formalizes what is occurring in many practices.

Ms. Burks called for the question. The motion to end debate was seconded and carried.

Dr. Dalton restated the motion that the definition and duties as presented for an RA exceeds the scope as currently stated in the law for a radiologic technologist. The motion was carried. Dr. Dalton then posed the question as to whether or not the board has a responsibility to address possible practice outside the scope of this profession. Dr. Cothran reminded the Board that this is a complaint driven system. Ms. Yeatts suggested that this topic be addressed in the Board's newsletter.

REGULATORY UPDATE AND ACTIONS

Chart of Regulatory Actions

Ms. Yeatts reviewed the chart of current regulatory actions noting those that would require action at the current meeting and those awaiting approval from the Governor's office.

Adoption of Notice of Intended Regulatory Action (NOIRA) – 18VAC85-10-10 et seq recommended revisions to the regulations for public participation guidelines (periodic review)

Dr. Bell moved to adopt a NOIRA to amend Chapter 10, Public Participation Guidelines. The motion was seconded and carried.

Adoption of proposed regulations 18VAC85-20-22 et seq. for volunteer restricted license for practice in free Clinics replacing emergency regulations currently in effect (9/1/06 to 8/31/07)

Dr. Ransone moved to adopt proposed regulations to authorize issuance of a restricted volunteer license for practice without compensation in free clinics. The motion was seconded and carried.

Adoption of final regulations 18VAC85-20-290 for reporting of malpractice paid claims on physician profile

Ms. Nosbisch advised that these regulations were to further clarify the law and capture paid claims that practitioners may not have felt obligated to report for one reason or another. Several board members voiced their concerns about a possible lack of clarity of timelines for reporting and what constitutes a paid claim. Ms. Yeatts reminded the members that the Board had adopted this language at a previous meeting and the proposed language had completed the comment period with no comment or concerns raised. Ms. Nosbisch advised that communication will be sent to the practitioner regarding the reporting requirement and note the additional time allowance without any additional penalties.

Dr. Ransone moved to adopt the final amended regulations with the change as noted in C (4). The motion was seconded. The discussion continued with the topic of determining a monetary amount as a cut-off for paid claims that should be reported to the profile. Mr. Casway reiterated §54.1-2910.1 (C) which states "... all paid claims..."

Dr. Dalton proposed an amendment to 18VAC85-20-290 (C) indicating "any payment in excess of \$5000.00 for the benefit..." Dr. Ransone accepted the amendment as friendly. The motion was seconded.

Dr. Bell suggested that the Board vote to reject the amendment. Dr. Dalton's amendment was defeated 7 to 5.

Dr. Ransone restated her motion to adopt the final amended regulations with the change as noted in C (4). The motion carried 10 to 3.

Adoption of proposed regulations 18VAC85-20-235 for a waiver of continuing education for medical Examiners

Dr. Ransone moved to adopt a proposed amendment to authorize the Board to waive all or part of CME for persons who only practice as medical examiners. The motions was seconded, and the vote was unanimous.

Adoption of final regulations 18VAC85-130-10 et seq. for certified professional midwives – replacing emergency regulations currently in effect (12/21/05 to 12/20/06)

Dr. Bell moved to adopt final regulations for the licensure of midwives. The motion was seconded and carried.

Adoption of proposed regulations 18VAC90-30-10 et seq. for collaboration and consultation for certified nurse midwives – replacing emergency regulations in effect (9/1/06 to 8/31/07)

Dr. Piness moved to adopt the proposed regulations to replace the emergency regulations governing the licensure of nurse midwives and include the amendments recognized by the Committee of the Joint Boards. The motion was seconded and carried.

Adoption of fast-track regulations 18VAC85-20-235 for continuing education in chiropractic

Dr. Mosby moved to adopt the amendments to 18VAC85-20-235 as a fast-track action to clarify the requirement for clinical hours provided by approved providers of continuing education. The motion was seconded and carried.

Adoption of fast-track regulations 18VAC 85-20-30 for ethics in advertising

Dr. Hoffman moved to adopt the amendments to 18VAC85-20-30 as a fast-track action to require licensees who make claims in their advertising to maintain documentation in support of those claims. The motion was seconded and carried.

Adoption of Notice of Intended Regulatory Action 18VAC85-50-10 et seq. for pain management by physician assistants

Ms. Burks moved to adopt a NOIRA to amend 18VAC85-50-10 et seq. for physician assistants on pain management regulations. The motion was seconded and carried.

Adoption of Notice of Intended Regulatory Action 18VAC90-40-10 et seq. for the prescriptive authority regulations for nurse practitioners

Ms. Burks moved to adopt a NOIRA to amend 18VAC-90-40 for nurse practitioners on pain management regulations. The motion was seconded and carried.

Recommendation to refer pain management regulations to an ad hoc committee appointed by the President

Dr. Bell moved to refer the regulations on pain management to an ad hoc committee for drafting of proposed language. The motion was seconded and carried. Ms. Yeatts suggested a physician assistant and nurse practitioner representative be involved in this process.

PRACTITIONER INFORMATION REPORT

Ms. Nosbisch gave a quick overview of the profile process. Ms. Nosbisch explained that a need has been identified for a legislative fix to address such issues as non-compliance in reporting active clinical practice. Dr. Bell moved to accept the proposed recommendation to offer a CCA to licensees who do not respond to a courtesy letter requesting them to update their years of active clinical practice. The motion was seconded. After discussion, Dr. Bell withdrew her motion.

Dr. Dalton moved to consider issuing an advisory letter rather than a CCA to address the clinical practice issue. The motion was seconded and carried.

Dr. Mosby moved to forgo the CCA if for late compliance except in matters regarding paid claims, felonies and actions. The motion was seconded and carried.

Ms. Nosbisch announced to the Board that Virginia's website was ranked #2 in the Public Citizens Report ranking all state board of medicine websites.

LICENSING REPORT

Dr. Harp reviewed the license count and noted that Ms. Powers and her staff are doing a great job. This report was provided for informational purposes only.

CME Audit Sanctions

Dr. Bell moved to use advisory letters for the practitioners identified in the cycle 1 and cycle 2 audits. Dr. Bell suggested that the correspondence include a strong statement addressing the submission of fraudulent information as separate issue and punishable by the Board. Dr. Bell also noted that the practitioner should be put on notice that they will be included in the following audit. The motion was seconded and carried.

Ms. Yeatts suggested that a guidance document, similar to the Sanctions Reference Points, be drafted by staff for consideration by the Board to address a practitioner's deficiencies in continuing education.

DISCIPLINE REPORT

Ms. Deschenes briefly pointed out the increase in cases in APD and Profile and noted a significant decrease in outstanding CCAs. Ms. Deschenes advised that of the CCAs executed 1,040 were for profiling issues.

PROPOSED MEETING DATES FOR 2007

Ms. Burks moved to approve the proposed meeting dates for 2007 for the Full Board, Executive, Legislative and Credentials Committee and requested that the advisory boards be contacted regarding the possibility of changing their meeting dates to precede the Legislative Committee. The motion was seconded and carried.

FSMB VISIT

Dale Austin, Senior Vice-President with the Federation of State Medical Boards gave a broad overview of their organization and how they seek to act on behalf of the medical boards. The last portion of his presentation covered the physician competency initiative.

CONSIDERATION OF SUPPORT FOR THE NATIONAL ALLIANCE FOR PHYSICIAN COMPETENCE

An unidentified board member moved to support the concept of forming a national alliance on physician competence. The motion was seconded and carried.

NEXT SCHEDULED MEETING: February 22-24, 2007

ADJOURNMENT: With no further business to conduct, the meeting adjourned at 2:37 p.m.

Malcolm L. Cothran, Jr., MD
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Recording Secretary