

**VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES**

Friday, September 6, 2019

Department of Health Professions

Henrico, VA

CALL TO ORDER:

Dr. Conklin called the meeting of the Legislative Committee to order at 8:34 a.m.

ROLL CALL:

Ms. Opher called the roll; a quorum was established.

MEMBERS PRESENT:

Lori Conklin, MD, Vice-President & Chair
David Giammittorio, MD
Jane Hickey, JD
Jacob Miller, DO

MEMBERS ABSENT:

Kevin O'Connor, MD
Brenda Stokes, MD
Svinder Toor, MD

STAFF PRESENT:

William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director for Discipline
Colanthia Morton Opher, Deputy Director for Administration
Michael Sobowale, LLM, Deputy Director for Licensing
Barbara Matusiak, MD, Medical Review Coordinator
David Brown, DC, DHP Director
Barbara Allison-Bryan, MD, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT:

Ken Olshansky, MD
W. Scott Johnson, Esq., MSV
Ben Traynham, MSV
Clark Barrineau, MSV
Casey Pick – The Trevor Project
Adam Trimmer – Born Perfect
Vee Lamneck, Equality Virginia
Tom Intorcio – Virginia Catholic Conference

EMERGENCY EGRESS INSTRUCTIONS

Dr. Conklin provided the emergency egress instructions.

APPROVAL OF MINUTES OF MAY 17, 2019

Ms. Hickey moved to approve the meeting minutes of May 17, 2019 as presented. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

Dr. Miller moved to accept the agenda as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT

- Ken Olshansky, MD – spoke in favor of banning conversion therapy
- Casey Pick – spoke in favor of banning conversion therapy
- Adam Trimmer – spoke in favor of banning conversion therapy
- Vee Lamneck – spoke in favor of banning conversion therapy
- Tom Intorcio – spoke against banning conversion therapy

DHP DIRECTOR'S REPORT

Dr. Brown informed the members that the agency has transitioned to a new website and individual boards will be moving to it soon. He also reported that, at the request of the General Assembly, two work groups were formed and had recently met. The first, led by Dr. Brown, reviewed the laws, regulations, and other parameters concerning telemedicine in Virginia. The second, led by Dr. Allison-Bryan, identified the barriers to licensure for international medical graduates (IMG's).

Dr. Allison-Bryan said that Virginia had already done well by IMG's with the Board's leveling of the playing field in 2017. The Board now requires 1 year of postgraduate training for all medical graduates. Her report is due this fall and will reflect that Virginia has been a leader in facilitating the licensure of IMG's. She added that IMG's now represent 25% of the physicians practicing in the Commonwealth.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp introduced Michael Sobowale as the new Deputy Executive Director for Licensing at the Board. Mr. Sobowale said he appreciated the greetings of the Committee members and is pleased to be part of the Virginia Board of Medicine.

NEW BUSINESS

1. Chart of Regulatory Actions

Ms. Yeatts reviewed the Board's regulatory activity as of August 22nd. This report was for informational purposes only and did not require any action.

2. Committee Recommendation on Retiree License

Ms. Yeatts briefly reviewed the legislation passed by the General Assembly requiring the Board to create a “retiree” license.

She pointed out that this license would allow a practitioner to provide charity care and health care to patients in their residences, for whom travel is a barrier to receiving care.

The question, “what problem are we trying to solve by creating this license?” was asked and discussed.

Ms. Yeatts said that the patron of the bill is of the opinion that there are untapped medical resources in the community that could enhance access to care. He believes that physicians who are retired from full-time practice, but want to remain engaged in medicine and be helpful, could add to community resources. Ms. Yeatts also stated that the patron was made aware of the existing temporary licenses issued by the Board, but he did not think they met the intent of his bill.

Some of the concerns discussed at length by the members were:

- the confusion between the existing temporary licenses and restricted licenses.
- the exemption from civil liability of the retiree license.
- how is retiree defined; by age or number of years in practice?
- the appearance that the Board is lowering the standard of care to patients that are housebound.

Dr. Conklin spoke to the concern about the exemption from civil liability. She suggested that the Committee’s recommendation to the Full Board require those practicing on a retiree license for compensation to carry their own medical malpractice.

Ms. Deschenes pointed out that practitioners in the Commonwealth of Virginia are not currently required under law to carry medical malpractice insurance. Additionally, she noted that the way the statute is written suggests that the volunteer retiree license would only authorize charity care provided to homebound patients with restricted travel limitations. Ms. Deschenes point out that the statute uses an “and” to link “charity care” and “health care services to patients in their residence.” The statute does not appear to be written to say charity care or home health services for reimbursement, although that is one interpretation that is being considered.

Ms. Barrett commented that the Board could interpret the statute to read as an “or”. She will carefully review it and provide a report at the October Board meeting.

Ms. Yeatts suggested that, after Ms. Barrett’s report, the Board consider developing a guidance document to list and explain all the licenses with restrictions to clear up any confusion.

Ms. Hickey said that with the population aging and a shortage of physicians, she can see a need for this license. She added that the practitioner would still need to meet the standard of care expected by the Board.

--- FINAL APPROVED---

MOTION: After more discussion, Ms. Hickey moved to recommend to the Full Board that a Notice of Intended Regulatory Action on the issuance of a retiree license be adopted. The motion was seconded; the vote was 2-2. The motion and vote will be noted for the October Full Board.

3. Results of the Mixing, Diluting, or Reconstituting (MDR) Audit

Dr. Harp advised that, in late 2018, an audit was begun on 60 practitioners who indicated during the renewal process that they perform MDR of drugs for administration in their practice.

Dr. Harp noted that the audit was not complaint-based. DATA was asked to randomly select 15 physicians from each of the 4 Enforcement regions and achieve the broadest representation of specialties as possible. All told, 61 physicians were audited.

He said the first MDR audit of 44 physicians in 2011-2012 found most compliant with the requirements of the regulations. Those found non-compliant were sent advisory letters.

Dr. Harp reviewed the current audit form, the results of the 2018-2019 audit, and offered options to resolve the matter with those practitioners who were not in total compliance.

MOTION: After discussion, Ms. Hickey moved to send an advisory letter to each practitioner who was non-compliant, to publish the results of the audit in the newsletter, and for those with more than three violations, to conduct a follow-up audit in six months. The motion was not seconded.

MOTION: After additional discussion, Ms. Hickey moved that the results of the audit be published in the newsletter with a link to the regulations, the 30 physicians found to be non-complaint be sent an advisory letter, and that those with more than one violation be subject to a follow-up audit in six months. The motion was seconded, and the floor re-opened for discussion.

Dr. Giammittorio asked who judges the severity of the complaint.

Dr. Brown made the suggestion that, rather than trying to stratify who would be re-audited, the Committee could vote to send an advisory letter to all, or re-audit all those who were non-compliant.

MOTION: After more discussion, Dr. Giammittorio amended the motion on the floor. He moved that an advisory letter be sent to all the practitioners found to be non-compliant. The motion was properly seconded and carried unanimously.

Dr. Conklin called for a break at 10:11 a.m.; the meeting reconvened at 10:31 a.m.

4. Conversion Therapy

Ms. Yeatts provided the following staff note:

On October 5, 2018, the Department of Health Professions convened a Conversion Therapy Workgroup. Included were representatives from the Board of Social Work, Board of Nursing, Board of Medicine, Board of Counseling, Board of Psychology, House of Delegates, DHP staff and others. The workgroup heard testimony from the public, reviewed relevant documents, and discussed the issues thoroughly. It was determined that it would be up to the individual boards to decide whether they wanted to develop a guidance document or promulgate regulations.

Ms. Yeatts then pointed to the minutes of the October 2018 meeting, the proposed guidance document for the Board of Psychology, draft regulations for the Board of Counseling, and the position statements/publications from the American Psychiatric Association, American Academy of Child and Adolescent Psychiatry, American Academy of Pediatrics, American Medical Association, and SAMHSA.

MOTION: After some discussion, Ms. Hickey moved to recommend to the Full Board the development of a guidance document and to publish a Notice of Intended Regulatory Action to promulgate regulations. The motion was properly seconded and carried unanimously.

5. Veterans Administration (VA) Proposed Regulations to Increase Access of Telehealth to its Veterans

Dr. Harp informed the members that current federal regulation, 38 CFR 17.417, authorizes a Veterans Administration health care provider to practice telehealth in any location and within any state in which the provider or patient is physically located.

The VA is proposing to amend current regulation to include all health care professionals, including trainees, as telehealth providers. The health care professional will be held to VA policies and standards of care rather than those of the states.

Dr. Harp said that the Federation of State Medical Boards (FSMB) is asking for comment about the impact of the proposed regulations on Board processes.

MOTION: After some discussion, Ms. Hickey moved to recommend that, as a response to FSMB, PGY-1 residents be excluded as telemedicine providers in the proposed regulations. The motion was properly seconded and carried unanimously.

6. Proposed Meeting Date Change and Reminder

Ms. Opher stated that the original date of January 17, 2020 was set prior to the distribution of the state's calendar which shows January 17th will be a holiday. The new date of January 31st was proposed as an alternate date.

The Committee agreed to the new date.

ANNOUNCEMENTS

Committee members were reminded to stay for probable cause review

NEXT MEETING

January 30, 2020

ADJOURNEMENT

With no other business to conduct, the meeting adjourned at 11:05 a.m.

Lori Conklin, MD
Vice-President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary