



Advisory Board on Midwifery

Virginia Board of Medicine

May 24, 2019

10:00 a.m.

Advisory Board on Midwifery
Board of Medicine
Friday, May 24, 2019 @ 10:00 a.m.
9960 Mayland Drive, Suite 201, Henrico, VA
Training Room 2

| | Page |
|--|------|
| Call to Order – Kim Pekin, CPM, Chair | |
| Emergency Egress Procedures – William Harp, MD | i |
| Roll Call – Beulah Archer | |
| Approval of Minutes of February 2, 2018 | 1 |
| Approval of Minutes of September 21, 2018 | 4 |
| Adoption of the Agenda | |
| Public Comment on Agenda Items (15 minutes) | |
| New Business | |
| 1. Report of the 2019 General Assembly | 7 |
| 2. Regulations governing the practice of Licensed Midwives | 16 |
| Announcements | |
| Adjournment | |
| Next Scheduled Meeting October 4, 2019 @ 10:00 a.m. | |

**PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
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ADVISORY BOARD ON MIDWIFERY

Minutes

February 2, 2018

The Advisory Board on Midwifery met on Friday, February 2, 2018, at 10:00 a.m., at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Henrico, Virginia, 23233.

MEMBERS PRESENT:

Kim Pekin, CPM, Chair
 Maya Gunderson, CPM
 Natasha Jones, MSC
 Mayanne Zielinski, CPM

MEMBERS ABSENT:

Ami Keatts, M.D.

STAFF PRESENT:

William L. Harp, M.D. Executive Director
 Alan Heaberlin, Deputy Executive Director
 Elaine Yeatts, DHP Senior Policy Analyst
 Colanthia Morton, Operations Manager
 Beulah Baptist Archer, Licensing Specialist

GUESTS PRESENT:

Jennifer MacDonald, Public Health Nurse
 Manager, VDH

Willie Andrews, Director, Laboratory
 Operations, DGS

Janet Rainey, Director and Registrar, Office of
 Vital Records

Glenda Turner, VMA
 Adrienne Ross, VMA
 Marinda Shindler, VMA
 Michelle Reid, VDH
 Denise Cox, VDH
 Misty Ward, Brookhaven Birth Center

CALL TO ORDER

Kim Pekin called the meeting to order at 10:09 a.m.

EMERGENCY EGRESS PROCEDURES – Alan Heaberlin announced the Emergency Egress Procedures.

ROLL CALL –Beulah Baptist Archer called the roll, and a quorum was declared.

APPROVAL OF MEETING MINUTES of September 29, 2017

Maya Gunderson moved to approve the September 29, 2017 minutes. The motion was seconded and carried.

ADOPTION OF THE AMENDED AGENDA

Maya Gunderson moved to amend the agenda to include a presentation by Janet M. Rainey from the Office of Vital Records on the Electronic Birth Certificate process. The motion was seconded and carried.

PUBLIC COMMENT ON AGENDA ITEMS

None

NEW BUSINESS

1. Legislative Update

Ms. Yeatts reviewed legislation introduced in the 2018 General Assembly that might be of interest to the Advisory Board. No action was required.

2. Discussion regarding the timeliness and process for disseminating information to the midwifery community.

Jennifer MacDonald (VDH) and Willie Andrews (DCLS) addressed the Advisory Board on HB 449 and HB 1174 that clarify newborn screening tests and the timeliness in which the screenings are administered. They also discussed HB 1362 that will require the Department of General Services to ensure timely newborn screening services by offering the screenings seven days a week. Ms. Andrews impressed upon the Advisory Board the need to quickly discover time-critical illnesses and disorders on a state level and invited its members to become a part of this initiative.

3. Janet M. Rainey from the Office of Vital Records on the Electronic Birth Certificates.

Ms. Rainey and her staff provided a PowerPoint presentation for the Advisory Board that reviewed the process in detail for completing and submitting electronic birth certificates. They presented the tutorial of the Electronic Birth Certificate (EBC) process that begins training from March 2018 until May 2018; registration in June 2018, with the live rollout date of July 1, 2018. They spoke to several options for training that include computer-based independent training, group training at her office facilities, or satellite group training. The presentation included records retention strategies and several features of the EBC interview process that may be of concern to CPM's. Dr. Harp inquired of Ms. Rainey if she could draft a one-page document that the Board could disseminate to the 74 Virginia licensed midwives regarding this EBC initiative. The Advisory Board and Vital Records staff discussed deadlines for submission of the documents and training opportunities for the midwifery community to complete and submit electronic birth certificates.

ANNOUNCEMENTS

Mr. Heaberlin provided Midwifery licensure statistics in Virginia as of February 2, 2018.

| | |
|-------------------|----|
| Licensed Midwives | 74 |
|-------------------|----|

NEXT MEETING DATE

June 8, 2018, at 10:00 a.m.

ADJOURNMENT

Maya Gunderson moved to adjourn the meeting. Motion seconded and carried.

Kim Pekin, CPM, Chair

William L. Harp, MD
Executive Director

Beulah Baptist Archer, Licensing Specialist

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**ADVISORY BOARD ON MIDWIFERY
Minutes
September 21, 2018**

The Advisory Board on Midwifery met on Friday, September 21, 2018, at 10:00 a.m., at the Department of Health Professions, Perimeter Center; 9960 Mayland Drive, Henrico, Virginia, 23233.

MEMBERS PRESENT:

Kim Pekin, CPM, Chair
Mayanne Zielinski, CPM

MEMBERS ABSENT:

Ami Keatts, M.D.
Natasha Jones, MSC
Maya Gunderson, CPM

STAFF PRESENT:

William L. Harp, M.D. Executive Director
Colanthia Morton, Deputy for Administration
Elaine Yeatts, DHP Senior Policy Analyst
Beulah Baptist Archer, Licensing Specialist

GUESTS PRESENT:

None

CALL TO ORDER

Kim Pekin called the meeting to order at 10:05 a.m.

EMERGENCY EGRESS PROCEDURES – Dr. Harp announced the Emergency Egress Procedures.

ROLL CALL –Beulah Baptist Archer called the roll, and no quorum was declared.

APPROVAL OF MEETING MINUTES OF FEBRUARY 2, 2018

No quorum declared, so the minutes were not approved.

ADOPTION OF THE AMENDED AGENDA

No vote was taken.

PUBLIC COMMENT ON AGENDA ITEMS

No public comment

NEW BUSINESS

1. NARM Announces End of Internationally Educated Midwife Route Legislative Update

Kim Pekin reported that the end of IEM will have no bearing on the Virginia licensure process, and that any midwife seeking licensure will have to obtain the proper CPM certification.

2. Periodic Review of Regulations Elaine Yeatts reminded the Advisory Board that the regulatory review occurs every four years as mandated by the Governor's office.

Changes to page 9-18VAC85-130-31 *Current Name and Address are as follows:*
Replace "mailed" with "sent" to include electronic mail.

Recent change noted to 18VAC85-130-45 to allow a student midwife to request an extension up to 10 years.

Changes to 18VAC85-130-81, which is accompanied by a 68-page Guidance Document should be reviewed prior to 2019.

Mayanne Zielinski *asked whether access to and ownership of client records are synonymous. Adult records are maintained for six years and records for children eighteen years.*

Elaine Yeatts - Changes to Guidance Document 85-26, 85-27

Newborn Screening Results #4 Guidance Document 85-27 – Ms. Zielinski discussed an avenue by which the results are disseminated to CPM's.

Kim Pekin requested an update to the contact for the VDH and Early Hearing Detection and Intervention Hearing Program with Jennifer MacDonald, Public Health Nurse.

3. Board Member Badges

Colanthia Morton advised the Advisory Board that new ID badges will include the new logo, however, they are not yet available. Current identification badges will suffice until the new badges are received.

4. Election of Officers –No quorum declared, so no vote.

ANNOUNCEMENTS

No announcements.

NEXT MEETING DATE

January 25, 2019, at 10:00 a.m.

ADJOURNMENT

Kim Pekin adjourned the meeting.

Kim Pekin, CPM, Chair

William L. Harp, MD
Executive Director

Beulah Baptist Archer, Licensing Specialist

**Board of Medicine
Report of the 2019 General Assembly**

HB 1952 Patient care teams; podiatrists and physician assistants.

Chief patron: Campbell, J.L.

Summary as passed House:

Patient care team podiatrist definition; physician assistant supervision requirements. Establishes the role of "patient care team podiatrist" as a provider of management and leadership to physician assistants in the care of patients as part of a patient care team. The bill modifies the supervision requirements for physician assistants by establishing a patient care team model. The bill directs the Board of Medicine to adopt emergency regulations to implement the provisions of the bill and is identical to SB 1209.

02/22/19 Governor: Acts of Assembly Chapter text (CHAP0137)

HB 1970 Telemedicine services; payment and coverage of services.

Chief patron: Kilgore

Summary as passed:

Telemedicine services; coverage. Requires insurers, corporations, or health maintenance organizations to cover medically necessary remote patient monitoring services as part of their coverage of telemedicine services to the full extent that these services are available. The bill defines remote patient monitoring services as the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload. The bill requires the Board of Medical Assistance Services to include in the state plan for medical assistance services a provision for the payment of medical assistance for medically necessary health care services provided through telemedicine services. This bill is identical to SB 1221.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0211)

HB 1971 Health professions and facilities; adverse action in another jurisdiction.

Chief patron: Stolle

Summary as introduced:

Health professions and facilities; adverse action in another jurisdiction. Provides that the mandatory suspension of a license, certificate, or registration of a health professional by the Director of the Department of Health Professions is not required when the license, certificate, or registration of a health professional is revoked, suspended, or surrendered in another jurisdiction based on disciplinary action or mandatory suspension in the Commonwealth. The bill extends the time by which the Board of Pharmacy (Board) is required to hold a hearing after receiving an application for reinstatement from a nonresident pharmacy whose registration has been suspended by the Board based on revocation or suspension in another jurisdiction from not later than its next regular meeting after the expiration of 30 days from receipt of the reinstatement application to not later than its next regular meeting after the expiration of 60 days from receipt of the reinstatement application.

02/22/19 Governor: Acts of Assembly Chapter text (CHAP0138)

HB 2169 Physician assistants; licensure by endorsement.

Chief patron: Thomas

Summary as passed:

Physician assistants; licensure by endorsement. Authorizes the Board of Medicine to issue a license by endorsement to an applicant for licensure as a physician assistant who (i) is the spouse of an active duty member of the Armed Forces of the United States or the Commonwealth, (ii) holds current certification from the National Commission on Certification of Physician Assistants, and (iii) holds a license as a physician assistant that is in good standing, or that is eligible for reinstatement if lapsed, under the laws of another state.

03/12/19 Governor: Acts of Assembly Chapter text (CHAP0338)

HB 2184 Volunteer license, special; issuance for limited practice.

Chief patron: Kilgore

Summary as passed:

Volunteer dentists and dental hygienists. Removes certain requirements for dentists and dental hygienists volunteering to provide free health care for up to three consecutive days to an underserved area of the Commonwealth under the auspices of a publicly supported nonprofit organization that sponsors the provision of health care to populations of underserved people.

03/08/19 Governor: Acts of Assembly Chapter text (CHAP0290)

HB 2228 Nursing and Psychology, Boards of; health regulatory boards, staggered terms.

Chief patron: Bagby

Summary as introduced:

Composition of the Boards of Nursing and Psychology; health regulatory boards; staggered terms. Alters the composition of the Board of Nursing and replaces the requirement that the Board of Nursing meet each January with the requirement that it meet at least annually. The bill also removes specific officer titles from the requirement that the Board of Nursing elect officers from its membership. The bill replaces the requirement that a member of the Board of Psychology be licensed as an applied psychologist with the requirement that that position be filled by a member who is licensed in any category of psychology. The bill also provides a mechanism for evenly staggering the terms of members of the following health regulatory boards, without affecting the terms of current members: Board of Nursing, Board of Psychology, Board of Dentistry, Board of Long-Term Care Administrators, Board of Medicine, Board of Veterinary Medicine, Board of Audiology and Speech-Language Pathology, Board of Pharmacy, and Board of Counseling.

02/27/19 Governor: Acts of Assembly Chapter text (CHAP0169)

HB 2457 Medicine, osteopathy, podiatry, or chiropractic, practitioners of; inactive license, charity care.

Chief patron: Landes

Summary as passed:

Practitioners of medicine, osteopathy, podiatry, or chiropractic; retiree license. Provides that the Board of Medicine may issue a retiree license to any doctor of medicine, osteopathy, podiatry, or chiropractic who holds an active, unrestricted license to practice in the Commonwealth upon receipt of a request and submission of the required fee. The bill provides that a person to whom a retiree license has been issued shall not be required to meet continuing competency requirements for the first biennial renewal of such license. The bill also provides that a person to whom a retiree license has been issued shall only engage in the practice of medicine, osteopathy, podiatry, or chiropractic for the purpose of providing charity care or health care services to patients in their residence for whom travel is a barrier to receiving health care.

03/14/19 Governor: Acts of Assembly Chapter text (CHAP0379)

HB 2557 Drug Control Act; classifies gabapentin as a Schedule V controlled substance.

Chief patron: Pillion

Summary as passed:

Drug Control Act; Schedule V; gabapentin. Classifies gabapentin as a Schedule V controlled substance. Current law lists gabapentin as a drug of concern. The bill also removes the list of drugs of concern from the Code of Virginia and provides that any wholesale drug distributor licensed and regulated by the Board of Pharmacy and registered with and regulated by the U.S. Drug Enforcement Administration shall have until July 1, 2020, or within six months of final approval of compliance from the Board of Pharmacy and the U.S. Drug Enforcement Administration, whichever is earlier, to comply with storage requirements for Schedule V controlled substances containing gabapentin.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0214)

HB 2559 Electronic transmission of certain prescriptions; exceptions.

Chief patron: Pillion

Summary as passed House:

Electronic transmission of certain prescriptions; exceptions. Provides certain exceptions, effective July 1, 2020, to the requirement that any prescription for a controlled substance that contains an opioid be issued as an electronic prescription. The bill requires the licensing health regulatory board of a prescriber to grant such prescriber a waiver of the electronic prescription requirement for a period not to exceed one year due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber. The bill provides that a dispenser is not required to verify whether one of the exceptions applies when he receives a non-electronic prescription for a controlled substance containing an opioid. The bill requires the Boards of Medicine, Nursing, Dentistry, and Optometry to promulgate regulations to implement the prescriber waivers. Finally, the bill requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2022.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0664)

HB 2731 Lyme disease; disclosure of information to patients.

Chief patron: Edmunds

Summary as passed House:

Lyme disease; disclosure of information to patients. Requires every laboratory reporting the results of a test for Lyme disease ordered by a health care provider in an office-based setting to include, together with the results of such test provided to the health care provider, a notice stating that the results of Lyme disease tests may vary and may produce results that are inaccurate and that a patient may not be able to rely on a positive or negative result from such test. Such notice shall also include a statement that health care providers are encouraged to discuss Lyme disease test results with the patient for whom the test was ordered. The bill also provides that a laboratory that complies with the provisions of the bill shall be immune from civil liability absent gross negligence or willful misconduct.

03/18/19 Governor: Acts of Assembly Chapter text (CHAP0435)

SB 1004 Elective procedure, test, or service; estimate of payment amount.

Chief patron: Chase

Summary as passed:

Advance estimate of patient payment amount for elective medical procedure, test, or service; notice of right to request. Provides that every hospital currently required to provide an estimate of the payment amount for an elective procedure, test, or service for which a patient may be responsible shall also be required to provide each patient with written information regarding his right to request such estimate, to post written information regarding a patient's right to request such estimate conspicuously in public areas of the hospital, and to make such information available on the hospital's website.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0671)

SB 1106 Physical therapists & physical therapist assistants; licensure, Physical Therapy Licensure Compact.

Chief patron: Peake

Summary as introduced:

Licensure of physical therapists and physical therapist assistants; Physical Therapy Licensure Compact. Authorizes Virginia to become a signatory to the Physical Therapy Licensure Compact. The Compact permits eligible licensed physical therapists and physical therapist assistants to practice in Compact member states, provided they are licensed in at least one member state. In addition, the bill requires each applicant for licensure in the Commonwealth as a physical therapist or physical therapist assistant to submit fingerprints and provide personal descriptive information in order for the Board to receive a state and federal criminal history record report for each applicant. The bill has a delayed effective date of January 1, 2020, and directs the Board of Physical Therapy to adopt emergency regulations to implement the provisions of the bill.

03/08/19 Governor: Acts of Assembly Chapter text (CHAP0300)

SB 1167 Medicaid recipients; treatment involving opioids or opioid replacements, payment.

Chief patron: Chafin

Summary as passed:

Medicaid recipients; treatment involving opioids or opioid replacements; payment. Prohibits health care providers licensed by the Board of Medicine from requesting or requiring a patient who is a recipient of medical assistance services pursuant to the state plan for medical assistance to pay out-of-pocket costs associated with the provision of service involving (i) the prescription of an opioid for the management of pain or (ii) the prescription of buprenorphine-containing products, methadone, or other opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration for medication-assisted treatment of opioid addiction. The bill requires providers who do not accept payment from the Department of Medical Assistance Services (DMAS) who provide such services to patients participating in the Commonwealth's program of medical assistance services to provide written notice to such patient that (a) the Commonwealth's program of medical assistance services covers such health care services and DMAS will pay for such health care services if such health care services meet DMAS's medical necessity criteria and (b) the provider does not participate in the Commonwealth's program of medical assistance and will not accept payment from DMAS for such health care services. Such notice and the patient's acknowledgement of such notice shall be documented in the patient's medical record. This bill is identical to HB 2558.

03/18/19 Governor: Acts of Assembly Chapter text (CHAP0444)

SB 1439 Death certificates; medical certification, electronic filing.

Chief patron: McClellan

Summary as passed:

Death certificates; medical certification; electronic filing. Requires the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except for under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0224)

SB 1547 Music therapists; Board of Health Professions to evaluate regulation.

Chief patron: Vogel

Summary as passed:

Music therapy. Directs the Board of Health Professions to evaluate whether music therapists and the practice of music therapy should be regulated and the degree of regulation to be imposed. The bill requires the Board to report the results of its evaluation to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2019.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0680)

SB 1557 Pharmacy, Board of; cannabidiol oil and tetrahydrocannabinol oil, regulation of pharmaceutical.

Chief patron: Dunnivant

Summary as passed:

Board of Pharmacy; cannabidiol oil and tetrahydrocannabinol oil; regulation of pharmaceutical processors. Authorizes licensed physician assistants and licensed nurse practitioners to issue a written

certification for use of cannabidiol oil and THC-A oil. The bill requires the Board to promulgate regulations establishing dosage limitations, which shall require that each dispensed dose of cannabidiol oil or THC-A oil not exceed 10 milligrams of tetrahydrocannabinol. The bill requires the Secretary of Health and Human Resources and the Secretary of Agriculture and Forestry to convene a work group to review and recommend an appropriate structure for an oversight organization in Virginia and report its findings and recommendations to the Chairmen of the Senate Committees on Agriculture, Conservation and Natural Resources and Education and Health and the House Committees on Agriculture, Chesapeake and Natural Resources and Health, Welfare and Institutions by November 1, 2019.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0681)

SB 1760 Diagnostic X-ray machines; operation of machine.

Chief patron: DeSteph

Summary as introduced:

Diagnostic X-ray machines; operation. Provides that no person who has been trained and certified in the operation of a diagnostic X-ray machine by the manufacturer of such machine is required to obtain any other training, certification, or licensure or be under the supervision of a person who has obtained training, certification, or licensure to operate such a diagnostic X-ray machine, provided that (i) such diagnostic X-ray machine (a) is registered and certified by the Department of Health, (b) is being operated to conduct a body composition scan, and (c) is not operated to determine bone density or in the diagnosis or treatment of a patient and (ii) the subject of the body composition scan is notified of the risks associated with exposure to radiation emitted by the diagnostic X-ray machine.

01/31/19 Senate: Passed by indefinitely in Education and Health with letter (15-Y 0-N)

SB 1778 Counseling minors; certain health regulatory boards to promulgate regulations.

Chief patron: Newman

Summary as introduced:

Health regulatory boards; conversion therapy. Directs the Board of Counseling, the Board of Medicine, the Board of Nursing, the Board of Psychology, and the Board of Social Work to each promulgate regulations prohibiting the use of electroshock therapy, aversion therapy, or other physical treatments in the practice of conversion therapy with any person under 18 years of age.

02/06/19 Senate: Left in Education and Health

15
Board of Medicine
Regulatory/Policy Actions – 2019 General Assembly

EMERGENCY REGULATIONS:

| Legislative source | Mandate | Promulgating agency | Board adoption date | Effective date Within 280 days of enactment |
|--------------------|-----------------------------------|---------------------|------------------------------------|--|
| HB1952 | Patient care team – PAs | Medicine | 6/13/19 or 8/2/19 (signed 2/22) | 11/25/19 |
| HB2559 | Waiver for electronic prescribing | Medicine | 6/13/19 or 8/2/19 (signed 3/21) | 12/24/19 |

APA REGULATORY ACTIONS

| Legislative source | Mandate | Promulgating agency | Adoption date | Effective date |
|--------------------|-----------------|---------------------|--------------------|----------------|
| HB2457 | Retiree license | Medicine | NOIRA – 6/13/19 | ? |

NON-REGULATORY ACTIONS

| Legislative source | Affected agency | Action needed | Due date |
|------------------------|------------------------------|---|----------|
| HB1970 | Department | Review of telehealth; practice by adjacent physicians | 11/1/19 |
| HB2169 | Medicine | Review/revision of application content & process to identify & expedite military spouse apps | 7/1/19 |
| SB1557 | Medicine/Pharmacy/Department | Inclusion of NPs and PAs for registration to issue certifications Participation in workgroup to study oversight organization | 7/1/19 |
| SB1760 (not passed) | Department (Medicine) | Study of Xrays in spas – VDH | 11/1/19 |
| HJ682 (not passed) | Department | Study of foreign-trained physicians to provide services in rural areas | 11/1/19 |

Future Policy Actions:

HB793 (2018) - (2) the Department of Health Professions, by November 1, 2020, to report to the General Assembly a process by which nurse practitioners who practice without a practice agreement may be included in the online Practitioner Profile maintained by the Department of Health Professions; and (3) the Boards of Medicine and Nursing to report information related to the practice of nurse practitioners without a practice agreement that includes certain data, complaints and disciplinary actions, and recommended modifications to the provisions of this bill to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health and the Chairman of the Joint Commission on Health Care by November 1, 2021.

HB2559 (2019) - requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2022.

Commonwealth of Virginia



REGULATIONS

GOVERNING THE PRACTICE OF LICENSED MIDWIVES

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18 VAC 85-130-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Effective Date: March 22, 2019

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Part I. General Provisions.

18VAC85-130-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2957.7 of the Code of Virginia.

"Midwife"

"Practicing midwifery"

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"Board" means the Virginia Board of Medicine.

"Client" means a person receiving midwifery care and shall be considered synonymous with the word "patient."

"Controlled substance" means a drug, substance or immediate precursor in Schedules I through VI as set out in the Drug Control Act (§ 54.1-3400 et seq. of the Code of Virginia).

"CPM" means the Certified Professional Midwife credential issued by the North American Registry of Midwives.

"NARM" means the North American Registry of Midwives.

18VAC85-130-20. Public participation.

A separate board regulation, 18VAC85-11, entitled Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-130-30. Fees.

Unless otherwise provided, the following fees shall not be refundable:

1. The application fee for a license to practice as a midwife shall be \$277.
2. The fee for biennial active license renewal shall be \$312; the additional fee for late renewal of an active license within one renewal cycle shall be \$105.
3. The fee for biennial inactive license renewal shall be \$168; the additional fee for late renewal of an inactive license within one renewal cycle shall be \$55.
4. The fee for reinstatement of a license that has expired for a period of two years or more shall be \$367 in addition to the late fee. The fee shall be submitted with an application for licensure reinstatement.
5. The fee for a letter of good standing/verification of a license to another jurisdiction shall be \$10.
6. The fee for an application for reinstatement if a license has been revoked or if an application for reinstatement has been previously denied shall be \$2,000.
7. The fee for a duplicate wall certificate shall be \$15.

8. The fee for a duplicate renewal license shall be \$5.

9. The fee for a returned check shall be \$35.

10. For 2019, the fee for renewal of an active license shall be \$250, and the fee for renewal of an inactive license shall be \$125.

18VAC85-130-31. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when sent to the latest address of record provided or served to the licensee. Any change of name or address of record or the public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

Part II.

Requirements for Licensure and Renewal of Licensure.

18VAC85-130-40. Criteria for initial licensure.

A. An applicant for board licensure shall submit:

1. The required application on a form provided by the board and the application fee as prescribed in 18 VAC 85-130-30;
2. Evidence satisfactory to the board of current certification as a CPM; and
3. A report from NARM indicating whether there has ever been any adverse action taken against the applicant.

B. If an applicant has been licensed or certified in another jurisdiction, the applicant shall provide information on the status of each license or certificate held and on any disciplinary action taken or pending in that jurisdiction.

18VAC85-130-45. Practical experience under supervision.

A person may perform tasks related to the practice of midwifery under the direct and immediate supervision of a licensed doctor of medicine or osteopathic medicine, a certified nurse midwife, or a licensed midwife while enrolled in an accredited midwifery education program or during completion of the North American Registry of Midwives' Portfolio Evaluation Process Program without obtaining a license issued by the board until such person has taken and received the results of any examination required for CPM certification or for a period of 10 years, whichever occurs sooner.

18VAC85-130-50. Biennial renewal of licensure.

A. A licensed midwife shall renew licensure biennially during the midwife's birth month in each odd-numbered year by:

1. Paying to the board the renewal fee as prescribed in 18 VAC 85-130-30; and
2. Attesting to having current, active CPM certification by NARM.

B. A licensed midwife whose license has not been renewed by the first day of the month following the month in which renewal is required shall not be considered licensed in Virginia.

C. An additional fee to cover administrative costs for processing a late application renewal shall be imposed by the board as prescribed by 18 VAC 85-130-30.

18VAC85-130-60. Inactive licensure.

A. A licensed midwife who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license.

1. The holder of an inactive license shall not be required to maintain current, active certification by NARM.

2. An inactive licensee shall not be entitled to perform any act requiring a license to practice midwifery in Virginia.

B. An inactive licensee may reactivate licensure by:

1. Payment of the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure for the biennium in which the license is being reactivated; and

2. Submission of documentation of having current, active certification by NARM.

C. The board reserves the right to deny a request for reactivation to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provision of this chapter.

18VAC85-130-70. Reinstatement.

A. A licensed midwife who allows licensure to lapse for a period of two years or more and chooses to resume practice shall submit to the board a reinstatement application, information on practice and licensure in other jurisdictions for the period in which the license was lapsed in Virginia, proof of current, active certification by NARM, and the fee for reinstatement of licensure as prescribed in 18 VAC 85-130-30.

B. A licensed midwife whose license has been revoked by the board and who wishes to be reinstated must make a new application to the board, hold current, active certification by NARM, and pay the fee for reinstatement of a revoked license as prescribed in 18 VAC 85-130-30.

**Part III.
Practice Standards.**

18VAC85-130-80. General disclosure requirements.

A licensed midwife shall provide written disclosures to any client seeking midwifery care. The licensed midwife shall review each disclosure item and obtain the client's signature as evidence that the disclosures have been received and explained. Such disclosures shall include:

1. A description of the licensed midwife's qualifications, experience, and training;

2. A written protocol for medical emergencies, including hospital transport, particular to each client;

3. A statement as to whether the licensed midwife has hospital privileges;

4. A statement that a licensed midwife is prohibited from prescribing, possessing or administering controlled substances;
5. A description of the midwife's model of care;
6. A copy of the regulations governing the practice of midwifery;
7. A statement as to whether the licensed midwife carries malpractice or liability insurance coverage and, if so, the extent of that coverage;
8. An explanation of the Virginia Birth-Related Neurological Injury Compensation Fund and a statement that licensed midwives are currently not covered by the fund; and
9. A description of the right to file a complaint with the Board of Medicine and with NARM and the procedures and contact information for filing such complaint.

18VAC85-130-81. Disclosures on health risks.

A. Upon initiation of care, a midwife shall review the client's medical history in order to identify pre-existing conditions or indicators that require disclosure of risk for home birth. The midwife shall offer standard tests and screenings for evaluating risks and shall document client response to such recommendations. The midwife shall also continually assess the pregnant woman and baby in order to recognize conditions that may arise during the course of care that require disclosure of risk for birth outside of a hospital or birthing center.

B. If any of the following conditions or risk factors are presented, the midwife shall request and review the client's medical history, including records of the current or previous pregnancies; disclose to the client the risks associated with a birth outside of a hospital or birthing center; and provide options for consultation and referral. If the client is under the care of a physician for any of the following medical conditions or risk factors, the midwife shall consult with or request documentation from the physician as part of the risk assessment for birth outside of a hospital or birthing center.

1. Antepartum risks:

Conditions requiring ongoing medical supervision or ongoing use of medications;

Active cancer;

Cardiac disease;

Severe renal disease -- active or chronic;

Severe liver disease -- active or chronic;

HIV positive status with AIDS;

Uncontrolled hyperthyroidism;

Chronic obstructive pulmonary disease;

Seizure disorder requiring prescriptive medication;

Psychiatric disorders;

Current substance abuse known to cause adverse effects;

Essential chronic hypertension over 140/90;

Significant glucose intolerance;

Genital herpes;

Inappropriate fetal size for gestation;

Significant 2nd or 3rd trimester bleeding;

Incomplete spontaneous abortion;

Abnormal fetal cardiac rate or rhythm;

Uterine anomaly;

Platelet count less than 120,000;
 Previous uterine incision and/or myomectomy with review of surgical records and/or subsequent birth history;
 Isoimmunization to blood factors;
 Body mass index (BMI) equal to or greater than 30;
 History of hemoglobinopathies;
 Acute or chronic thrombophlebitis;
 Anemia (hematocrit less than 30 or hemoglobin less than 10 at term);
 Blood coagulation defect;
 Pre-eclampsia/eclampsia;
 Uterine ablation;
 Placental abruption;
 Placenta previa at onset of labor;
 Persistent severe abnormal quantity of amniotic fluid;
 Suspected chorioamnionitis;
 Ectopic pregnancy;
 Pregnancy lasting longer than 42 completed weeks with an abnormal nonstress test;
 Any pregnancy with abnormal fetal surveillance tests;
 Rupture of membranes 24 hours before the onset of labor;
 Position presentation other than vertex at term or while in labor; or
 Multiple gestation.

2. Intrapartum risks:

Current substance abuse;
 Documented intrauterine growth retardation (IUGR)/small for gestational age (SGA) at term;
 Suspected uterine rupture;
 Active herpes lesion in an unprotectable area;
 Prolapsed cord or cord presentation;
 Suspected complete or partial placental abruption;
 Suspected placental previa;
 Suspected chorioamnionitis;
 Pre-eclampsia/eclampsia;
 Thick meconium stained amniotic fluid without reassuring fetal heart tones and birth is not imminent;
 Position presentation other than vertex at term or while in labor;
 Abnormal auscultated fetal heart rate pattern unresponsive to treatment or inability to auscultate fetal heart tones;
 Excessive vomiting, dehydration, or exhaustion unresponsive to treatment;
 Blood pressure greater than 140/90 that persists or rises and birth is not imminent;
 Maternal fever equal to or greater than 100.4°F; or
 Labor or premature rupture of membrane (PROM) less than 37 weeks according to due date.

3. If a risk factor first develops when birth is imminent, the individual midwife must use judgment taking into account the health and condition of the mother and baby in determining whether to proceed with a home birth or arrange transportation to a hospital.

C. If the risks factors or criteria have been identified that may indicate health risks associated with birth of a child outside of a hospital or birthing center, the midwife shall provide evidence-based

information on such risks. Such information shall be specified by the board in guidance documents and shall include evidence-based research and clinical expertise from both the medical and midwifery models of care.

D. The midwife shall document in the client record the assessment of all health risks that pose a potential for a high risk pregnancy and, if appropriate, the provision of disclosures and evidence-based information.

18VAC85-130-90. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-130-100. Client records.

A. Practitioners shall comply with provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or the client's personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage client records and shall maintain timely, accurate, legible and complete client records. Practitioners shall clearly document objective findings, decisions and professional actions based on continuous assessment for ongoing midwifery care.

D. Practitioners shall document a client's decisions regarding choices for care, including informed consent or refusal of care. Practitioners shall clearly document when a client's decisions or choices are in conflict with the professional judgment and legal scope of practice of the licensed midwife.

E. Practitioners shall maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

1. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child;
2. Records that have previously been transferred to another practitioner or health care provider or provided to the client or the client's personal representative do not have to be kept for a minimum of six years following the last client encounter; or
3. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

F. Practitioners shall in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

G. When a practitioner is closing, selling or relocating a practice, the practitioner shall meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client.

18VAC85-130-110. Practitioner-client communication; termination of relationship.**A. Communication with clients.**

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately inform a client or the client's legally authorized representative of the client's assessment and prescribed plan of care. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure directed by the practitioner.
2. A practitioner shall present information relating to the client's care to a client or the client's legally authorized representative in understandable terms and encourage participation in the decisions regarding the client's care.
3. Before any invasive procedure is performed, informed consent shall be obtained from the client. Practitioners shall inform clients of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent licensed midwife practicing in Virginia would tell a client. In the instance of a minor or a client who is incapable of making an informed decision on the client's own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

B. Termination of the practitioner/client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make a copy of the client record available, except in situations where denial of access is allowed by law.
2. Except as provided in § 54.1-2962.2 of the Code of Virginia, a practitioner shall not terminate the relationship or make services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-130-120. Practitioner responsibility.**A. A practitioner shall:**

1. Transfer care immediately in critical situations that are deemed to be unsafe to a client or infant and remain with the client until the transfer is complete;
2. Work collaboratively with other health professionals and refer a client or an infant to appropriate health care professionals when either needs care outside the midwife's scope of practice or expertise; and
3. Base choices of interventions on empirical and/or research evidence that would indicate the probable benefits outweigh the risks.

B. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of the midwife's practice or for which the midwife is not trained and individually competent;
2. Knowingly allow apprentices or subordinates to jeopardize client safety or provide client care outside of the apprentice's or subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to those who are properly trained and supervised; and
3. Exploit the practitioner/client relationship for personal gain.

18VAC85-130-130. Advertising ethics.

A. Any statement specifying a fee, whether standard, discounted or free, for professional services that does not include the cost of all related procedures, services and products that, to a substantial likelihood, will be necessary for the completion of the advertised service as it would be understood by an ordinarily prudent person shall be deemed to be deceptive or misleading, or both. Where reasonable disclosure of all relevant variables and considerations is made, a statement of a range of prices for specifically described services shall not be deemed to be deceptive or misleading.

B. Advertising a discounted or free service, examination, or treatment and charging for any additional service, examination, or treatment that is performed as a result of and within 72 hours of the initial office visit in response to such advertisement is unprofessional conduct unless such professional services rendered are as a result of a bona fide emergency. This provision may not be waived by agreement of the client and the practitioner.

C. Advertisements of discounts shall disclose the full fee that has been discounted. The practitioner shall maintain documented evidence to substantiate the discounted fees and shall make such information available to a consumer upon request.

D. A licensee shall disclose the complete name of the board that conferred the certification when using or authorizing the use of the term "board certified" or any similar words or phrase calculated to convey the same meaning in any advertising for the licensee's practice.

E. A licensee of the board shall not advertise information that is false, misleading, or deceptive. For an advertisement for a single practitioner, it shall be presumed that the practitioner is responsible and accountable for the validity and truthfulness of its content. For an advertisement for a practice in which there is more than one practitioner, the name of the practitioner or practitioners responsible and accountable for the content of the advertisement shall be documented and maintained by the practice for at least two years.

18VAC85-130-140. Vitamins, minerals and food supplements.

A. The recommendation or direction for the use of vitamins, minerals or food supplements and the rationale for that recommendation shall be documented by the practitioner. The recommendation or direction shall be based upon a reasonable expectation that such use will result in a favorable client outcome, including preventive practices, and that a greater benefit will be achieved than that which can be expected without such use.

B. Vitamins, minerals, or food supplements, or a combination of the three, shall not be sold, dispensed, recommended, prescribed, or suggested in doses that would be contraindicated based on the individual client's overall medical condition and medications.

C. The practitioner shall conform to the standards of the practitioner's particular branch of the healing arts in the therapeutic application of vitamins, minerals or food supplement therapy.

18VAC85-130-150. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility as defined in § 37.2-100 of the Code of Virginia, or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-130-160. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or
2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.
2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client shall mean: spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee or apprentice shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18VAC85-130-170. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.