

**VIRGINIA BOARD OF MEDICINE
EXECUTIVE COMMITTEE MINUTES**

Friday, August 6, 2021

Department of Health Professions

Henrico, VA

CALL TO ORDER: Mr. Marchese called the meeting of the Executive Committee to order at 8:36 a.m.

ROLL CALL: Ms. Opher called the roll; a quorum was established.

MEMBERS PRESENT: Blanton Marchese – President, Chair
David Archer, MD – Vice-President
Amanda Barner, MD - Secretary-Treasurer
Alvin Edwards, MDiv, PhD
Jane Hickey, JD
Joel Silverman, MD
Brenda Stokes, MD

MEMBERS ABSENT: Karen Ransone, MD

STAFF PRESENT: William L. Harp, MD - Executive Director
Jennifer Deschenes, JD - Deputy Exec. Director for Discipline
Colanthia Morton Opher - Deputy Exec. Director for Administration
Michael Sobowale, LLM - Deputy Exec. Director for Licensure
Barbara Matusiak, MD, Medical Review Coordinator
Barbara Allison-Bryan, MD - DHP Deputy Director
Elaine Yeatts - DHP Senior Policy Analyst
Erin Barrett, JD – Assistant Attorney General

OTHERS PRESENT: Clark Barrineau - MSV
Scott Johnson, JD – MSV & Hancock Daniel

EMERGENCY EGRESS INSTRUCTIONS

Dr. Archer provided the emergency egress instructions for Conference Room 4.

APPROVAL OF MINUTES OF APRIL 9, 2021

Dr. Edwards moved to approve the minutes from April 9, 2021 virtual meeting as presented. The motion was seconded by Dr. Stokes and carried unanimously.

ADOPTION OF AGENDA

Dr. Edwards moved to adopt the agenda as presented. The motion was seconded by Dr. Stokes and carried unanimously.

PUBLIC COMMENT

The Committee heard comment from Clark Barrineau, Assistant Vice-President for Government Affairs and Health Policy with the Medical Society of Virginia (MSV), on HB 793 and HB 1737. He stated that, upon review of the preliminary report, there was no data to support that autonomous practice by Nurse Practitioners (NP's) with 5 years of clinical experience provided more access to care for patients. Additionally, he pointed out that there was no Virginia-specific evidence to suggest that a further reduction from 5 years to 2 years will increase access. In closing, Mr. Barrineau urged the Committee to recommend to the Full Board that 5 years of clinical experience for autonomous practice remain a requirement for NP's.

DHP DIRECTOR'S REPORT

Dr. Allison-Bryan provided an update on:

- 1- Virginia's vaccination efforts emphasizing the message being directed at unvaccinated people.
- 2- The mandate for Commonwealth of Virginia employees to show evidence of vaccination or be tested weekly.
- 3- EO77 that reduces Virginia's reliance on single-use plastic products and reduces waste sent to landfills. The Board of Medicine is already looking into biodegradable utensils and will not be providing bottled water for Board and staff after the Board's current supply is gone.
- 4- Leslie Knachel has assumed leadership of the Board of Health Professions to allow Dr. Elizabeth Carter to devote more time to the Healthcare Workforce Data Center.

PRESIDENT'S REPORT

Mr. Marchese reported that he, Dr. Harp, Ms. Opher, Mr. Sobowale and Dr. Allison-Bryan met with Jeff Lunardi, Executive Director for the Joint Commission on Health Care, and Ashely Williams, Virginia Management Fellow and Assistant Health Policy Analyst. The meeting was to discuss the Board of Medicine's decision not to join the Interstate Medical Licensure Compact and the Board's current process to expedite licenses.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp provided a brief report on the Board's finances and said that the FY2023-2024 budget request includes another FTE to handle the increase in workload for endorsement, compact,

and reinstatement licensing. He also mentioned the Board members whose terms have expired and gave an overview of the appointment process. He noted that the Office of the Secretary of the Commonwealth is working diligently to appointment new members as quickly as possible.

NEW BUSINESS

1. Regulatory and Legislative Issues – Elaine Yeatts

Ms. Yeatts presented the chart of regulatory actions as of July 28, 2021. She noted that 18VAC85-160 Regulations Governing the Licensure of Surgical Assistants and Registration of Surgical Technologists were currently at the Department of Planning and Budget.

She also highlighted several 2021 General Assembly Regulatory/Policy Actions including SB1189, which requires emergency regulations for the Occupational Therapy Compact.

Both of these items were for informational purposes only and did not require any action.

2. Regulatory Action – Adoption of Emergency Regulations

Ms. Yeatts advised that SB1189 of the 2021 General Assembly adopted the Occupational Therapy Compact, thereby making Virginia its first member state. She said that the regulations to implement the Compact must include a fee for the initial Compact privilege and a biennial renewal fee to continue the privilege to practice. A Compact privilege in Virginia will hold OT's and OTA's privileged to practice in Virginia to the laws and regulations of the Board of Medicine. She also advised that the regulations presented for consideration were discussed with the members of the Advisory Board on Occupational Therapy on May 25th.

MOTION: Dr. Edwards moved to approve the emergency regulations for implementation of the Occupational Therapy Compact and to adopt a Notice of Intended Regulatory Action to replace the emergency regulations. The motion was seconded by Dr. Stokes and carried unanimously.

3. Adoption of Exempt Regulations Pursuant to 2021 Legislation

Ms. Yeatts provided a summary of the following:

1. HB1737 – Practice of Nurse Practitioners without practice agreements (reduction of years in clinical practice to qualify for autonomous practice from 5 years to 2 years).
2. HB1747 – Practice of Clinical Nurse Specialists (CNS) as Nurse Practitioners (elimination of registration of CNS's under the Board of Nursing and initiation of licensure under the Joint Boards; requirement for a practice agreement; prescriptive authority for CNS's who qualify)

3. HB1817 – Practice of Certified Nurse Midwives (CNM) without a practice agreement (1,000 hours of clinical practice under a practice agreement with a patient care team physician OR with a certified nurse midwife who has at least 2 years of experience required for autonomous practice).

Ms. Yeatts noted that the amendments may be adopted as an exempt action because they have been reviewed by the Assistant Attorney General and determined to conform the regulations to the changes in the Code. The draft regulations were reviewed by the Committee of the Joint Boards and recommended for adoption in June, and the Board of Nursing adopted the changes to Title 54.1-Chapters 30 and 40 on July 20th.

MOTION: Dr. Edwards moved to adopt changes to Chapters 30 (Nurse Practitioners) and 40 (Prescriptive Authority for NP's) to conform the regulations to the changes in the Code of Virginia. The motion was seconded by Dr. Stokes and carried unanimously.

4. Adoption of Proposed Regulations for Clinical Nurse Specialist Registration as a Fast-Track Action

Ms. Yeatts highlighted the necessary changes for renewal of licenses for CNS's (HB1747). She stated that the changes are not simply to conform to the Code, so they cannot be deemed exempt regulatory actions. She also advised that the Board of Nursing adopted these changes on July 20th.

MOTION: Dr. Edwards moved to adopt the amendments as proposed regulations by a fast-track action. The motion was seconded by Dr. Stokes and carried unanimously.

5. Board Action – Adoption of Notice of Intended Regulatory Action (NOIRA) – Licensed Certified Midwives

Ms. Yeatts stated that the NOIRA will identify the general requirements for licensure, renewal, and practice of Licensed Certified Midwives (LCM) under the joint regulation of the Boards of Nursing and Medicine. She also noted that the Board of Nursing adopted the NOIRA on July 20th.

MOTION: Dr. Edwards moved to approve the issuance of a Notice of Intended Regulatory Action to promulgate a new chapter in the Administrative Code for the licensure of LCM's. The motion was seconded by Dr. Stokes and carried unanimously.

6. Adoption of Final Regulations for Waiver of Electronic Prescribing

Ms. Yeatts reviewed the proposed amendments to 18VAC90-40, Regulations Governing Prescriptive Authority for Nurse Practitioners. She advised that the amendments were identical to the emergency regulations that became effective on December 23, 2019. No comment has been received on these proposed final regulations.

MOTION: Dr. Edwards moved to adopt the final regulations for nurse practitioners to replace the emergency regulations for a temporary waiver for e-prescribing of opioids. The motion was seconded by Dr. Stokes and carried unanimously.

7. Guidance Document – Revision of 90-56 – Practice Agreements for Nurse Practitioners

Ms. Yeatts advised that Guidance Document 90-56 on practice agreements has been substantially revised to conform the guidance to statutory revisions from the 2021 Session of the General Assembly. She noted that the Board of Nursing adopted the revised document on July 20th, and it must be jointly adopted by the Board of Medicine.

MOTION: Dr. Edwards moved to adopt the revised Guidance Document 90-56 as presented. The motion was seconded by Dr. Stokes and carried unanimously.

8. Report on the Implementation of HB 793 (2018)

Mr. Marchese led the discussion on this report. He reminded the Committee that in 2018, HB793 established a pathway to autonomous practice for nurse practitioners. The Enactment Clause in the bill requires the Boards of Nursing and Medicine to report certain data to the Chairmen of the House Committee on Health, Welfare and Institutions, the Senate Committee on Education and Health, and the Joint Commission on Health Care by November 1, 2021.

Board members reviewed the Enactment Clause and the Draft Report, as well as comment from the Medical Society of Virginia, Virginia Academy of Family Physicians, Virginia Orthopedic Society, Virginia Society of Eye Physicians and Surgeons, Virginia College of Emergency Physicians, Virginia Society of Anesthesiologists, Psychiatric Society of Virginia, Virginia Chapter of the American Academy of Pediatrics, Virginia Chapter of the American College of Surgeons, and the Richmond Academy of Medicine.

Dr. Archer said the one area that was categorically difficult was if sufficient evidence existed to distinguish the impact of 2 years and 5 years of clinical experience. In 2018, the argument was that autonomous practice would provide greater access to care in rural areas of the state. However, the data presented does not support that. This data is observational and not statistical, so the Board's interpretation of the data is just as valid as any other interpretation.

Recommended Modifications of Act to Amend and Reenact Select Sections of the Code of Virginia Relating to Nurse Practitioners; Practice Agreements

1. Apply existing national data and data to be collected during the DHP study (Budget Amendment – SB1100) on Advanced Practice Registered Nurses (“APRNs”) to decisions regarding amending of this Act.

BOM recommendation – Change “apply” to “consider”. The existing national data may help inform the General Assembly's perspective, but the Virginia data will be most crucial to its decision.

2. Adopt the criteria for APRN practice as outlined in the National Council of State Boards of Nursing APRN Compact in order to better respond to healthcare needs by increasing

access to nurse practitioners across state lines through standardizing APRN scope of practice.

BOM recommendation – Accept as presented. The APRN practice criteria may or may not increase access to care. However, they will facilitate practice across state lines.

3. Amend the Act to enable nurse practitioners who hold licenses in both Virginia and another jurisdiction to use attestation of clinical experience in the other jurisdiction for the requisite years to practice without a practice agreement.

BOM recommendation – Accept as presented. Many nurses hold a license in more than one state. It is reasonable that **any** clinical experience under a practice agreement can be used to fulfill the requisite years of experience.

4. Follow the precedent that was set in 2021 legislation regarding licensed nurse practitioners in the category of certified nurse midwives (see §54.1-2957(H)) by providing the option for experienced nurse practitioners to enter into a practice agreement with less experienced nurse practitioners.

BOM recommendation – Strike this amendment. A less experienced nurse practitioner should establish a practice agreement with a physician, not an autonomous NP. There is value in the collaborative team model.

5. Permit a licensed nurse practitioner to provide documentary evidence of completion of two years of clinical experience directly to the Boards in lieu of the patient care team physician attestation in order to practice without a practice agreement.

BOM recommendation – Accept with the recommendation of “two” being removed and replaced with “the” years of service.

6. Collect data on nurse practitioners who have completed two years of clinical experience prior to being permitted to practice without a practice agreement for comparison to the data on those who have completed five years of experience.

BOM recommendation – Accept as presented.

7. Permanently modify the Act to require two years of clinical experience prior to practicing without a practice agreement.

BOM recommendation – Continue with the 2018 legislation and require 5 years of clinical experience prior to practicing without a practice agreement.

8. Eliminate the practice agreement requirement from the Act because 1) a core competency of nurse practitioner education includes collaboration with the patient care team to achieve optimal care outcomes, and 2) disciplinary actions against nurse practitioners who have practiced without a practice agreement identified in this Report did not reveal a greater safety risk to the public.

BOM recommendation - Strike this amendment.

MOTION: Dr. Stokes moved to accept the Committee’s recommendations on the proposed modifications of the Act to amend and reenact select sections of the Code of Virginia, relating to nurse practitioners; practice agreement. The motion was seconded by Dr. Edwards and carried unanimously.

ANNOUNCEMENTS

There were no announcements.

The next meeting of the Executive Committee will be December 3, 2021 @ 8:30 a.m.

ADJOURNMENT

With no additional business, the meeting adjourned at 10:24 a.m.

Blanton Marchese
President

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary