

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 13, 2019

Department of Health Professions

Henrico, VA 23233

- CALL TO ORDER:** Dr. O'Connor called the meeting to order at 8:36 AM.
- ROLL CALL:** Ms. Opher called the roll. A quorum was established.
- MEMBERS PRESENT:** Kevin O'Connor, MD, President
Ray Tuck, DC, Vice-President
Lori Conklin, MD, Secretary-Treasurer
Syed Ali, MD
David Archer, MD
James Arnold, DPM
Manjit Dhillon, MD
Alvin Edwards, PhD
David Giammittorio, MD
Jane Hickey, JD
L. Blanton Marchese
Jacob Miller, DO
Karen Ransone, MD
Brenda Stokes, MD
David Taminger, MD
Svinder Toor, MD
Kenneth Walker, MD
Martha Wingfield
- MEMBERS ABSENT:** None
- STAFF PRESENT:** William L. Harp, MD-Executive Director
Jennifer Deschenes, JD-Deputy Executive Director for Discipline
Colanitha M. Opher-Deputy Executive Director for Administration
Barbara Matusiak, MD-Medical Review Coordinator
Cheryl Clay-Administrative Assistant
Leslie van den Berg-Administrative Assistant
Barbara Allison-Bryan, MD-DHP Deputy Director
Erin Barrett, JD-Assistant Attorney General
- OTHERS PRESENT:** Scott Johnson, JD-HDJN & MSV
Amy Stewart-VCU HPMP
Peggy Wood-DHP Liaison for HPMP
Caitlin Carnell, MD-Chief Resident, VCU Department of Psychiatry
Janet Knisely, PhD-VCU HPMP Program Director

EMERGENCY EGRESS

Dr. Tuck provided the emergency egress procedures for Conference Room 2.

APPROVAL OF THE FEBRUARY 14, 2019 MINUTES

Dr. Miller moved to approve the minutes as presented; the motion was properly seconded and carried unanimously.

ADOPTION OF THE AGENDA

Dr. Ransone moved to accept the agenda as presented; the motion was properly seconded and carried unanimously.

PRESENTATION BY THE HEALTH PRACTITIONERS' MONITORING PROGRAM (HPMP) – Janet Knisely, PhD, Program Director

Dr. Knisely presented an overview of HPMP to the Board members. She described HPMP's structure and processes to include eligibility criteria, the intake process, case management, and how a practitioner's readiness to return to practice is assessed. She said that a citizen member has been added to the Program Committee. After the presentation, Dr. Knisely and Ms. Wood fielded several questions from the members.

Dr. Harp shared with the Board that Dr. Knisely was retiring in a few weeks. He said that over the years, Dr. Knisely has been a valuable resource and an important stabilizing force at HPMP, especially since 2008. He then read an inscription to be placed on a plaque, expressing the Board's appreciation for the work she has done.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment; however, Dr. O'Connor referred to information in the packet that had been received from Sydney Rab and Kristen Ogden regarding the pain care crisis.

DHP DIRECTOR'S REPORT- Barbara Allison-Bryan, MD

Dr. Allison-Bryan provided the Board with an update on the CBD oil program and fielded questions about the processes.

Some of the concerns expressed by the Board members were:

- 1) The practitioner being responsible for writing for CBD oil, but the pharmacist having discretion in dispensing.
- 2) The practitioner being required to monitor the patient with no control over the prescribing.
- 3) The compatibility of CBD oil and THC-A oil with other drugs, particularly anesthesia medications.
- 4) The possibility of "pill mills" cropping up with the regulatory scheme.

Dr. Ali said that the Board of Medicine is not a good fit with the regulatory scheme for cannabis-based oils. The request for CBD oil comes up often with cancer patients. If the General Assembly wants to do something, they should legalize the product, so what is purchased can be used for anything. Dr. Ali stated that we should not take on the responsibility of tracking what patients purchase elsewhere. He noted that a weak law creates a black market.

Dr. Allison-Bryan said that although there are many places that CBD oil can currently be purchased in Virginia, it is not manufactured to the specifications that the processors under the Board of Pharmacy must use. Not only might some products be ineffective, but they may also contain contaminants.

Dr. Toor said that CBD oil has been touted as safe, but that is not what is being found. It is now a significant issue that there can be adverse drug interactions. In some instances, toxic levels have occurred.

Dr. Allison-Bryan thanked everyone for their comments and said that she would keep them informed on the progress of CBD oil program.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

Dr. O'Connor provided a synopsis of his attendance at the FSMB Annual Meeting in Fort Worth, TX. Accompanying him were Dr. Walker, Dr. Tuck, Dr. Conklin, Mr. Marchese, and Mrs. Opher. He noted that when attending these functions, he is always struck by how well Virginia is doing in relation to some other states.

VICE-PRESIDENT'S REPORT

Dr. Tuck had no report.

SECRETARY-TREASURER'S REPORT

Dr. Conklin had no report.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp briefly reviewed the Board's updated revenue and expenditures report, the Enforcement and APD hours, HPMP Participation report and FCLB's letter to Governor Northam commending Dr. Tuck for his participation at their 93rd Annual Congress meeting.

This report was for informational purposes only and did not require any action.

Dr. Harp said that Dr. Brown has indicated the Board should consider a reduction of renewal fees for all its professions for the next biennium. Ms. Yeatts added that the reduction, if approved, would be for the 2020-2021 cycle. The percent of the reduction will be on the agenda for the Executive Committee meeting August 2, 2019, at which time the vote to approve will occur.

---FINAL APPROVED---

Dr. Toor asked how the number of impaired physicians in Virginia compares to other states. Has it been stable over the years or is it climbing? Also, what are some preventative measures?

Dr. Harp advised that he was not aware of any available statistics capturing this information. From 1998 to 2009, the program was called the Health Practitioners' Intervention Program (HPIP). During that time, the Program had more outreach capability, and Medicine's number of participants was about 150. Then the funds were trimmed back, and it became a monitoring program. It would be up to the Department to decide if it wanted to add services to the contract.

Dr. O'Connor stated that he had become aware of a national monitoring program run out of FSMB; one of the components of the program is physician wellness.

Dr. Allison-Bryan agreed that there are more physicians who can benefit from the program. HPMP is investing funds in marketing so that more practitioners will self-refer, get the assistance they need, yet stay below the radar. A practitioner could enter the Program and complete 5 years without the Board knowing, as long as the practitioner is compliant with the Program and remains safe to practice.

Dr. Ali noted that an article in the *New York Times* reports that the physician suicide rate is the highest it has been this century.

As an aside, Dr. O'Connor recommended that the members read a *Fortune* magazine article "Death by a Thousand Clicks: Where Electronic Health Records Went Wrong", published March 18, 2019.

COMMITTEE and ADVISORY BOARD REPORTS

Dr. Harp pointed out that the existing committee assignments will be updated after the new President is named. Anyone with interest in serving on a particular committee can let Dr. Harp know.

Dr. Toor moved to accept all the minutes en bloc. The motion was seconded and carried.

OTHER REPORTS

Board Counsel

Erin Barrett, AAG provided an update on the status of the following cases:

- Clowdis v. Virginia Board of Medicine
- Merchia v. Virginia Board of Medicine

Board of Health Professions

Dr. O'Connor referred to Dr. Brown's report on page 63 of the agenda packet regarding a new law that will stagger board member terms to prevent the loss of historical knowledge and experience. He pointed out that licensure of art therapists is under study by the Board of Health Professions. He also said a workgroup is being convened to look at the practice of telemedicine.

Podiatry Report

Dr. Arnold had no report.

Chiropractic Report

Dr. Tuck announced that at the FCLB Annual Meeting in Mission Bay, CA, Dr. Brown was presented the George W. Arvidson Award for meritorious service. Dr. Tuck said that it was distinct honor for Dr. Brown, as few Arvidson awards had been presented previously. He said Dr. Brown's speech was "wonderful" and was well-received.

Committee of the Joint Boards of Nursing and Medicine

Dr. O'Connor highlighted the implementation of HB793 and the regulations for nurse practitioner autonomous practice. The application for autonomous practice is now on the Board of Nursing website. Dr. O'Connor has asked for data that captures the geographical distribution of autonomous nurse practitioners.

Break

Dr. O'Connor called for a 15-minute break; the meeting reconvened at 10:12 a.m.

Presentation on Physician Boundary Violations – Caitlin Carnell, MD

Dr. Carnell provided a very informative presentation on boundaries. She began by addressing the definition of a boundary violation. During her presentation, she described who is at risk and what types of violations are most common. Dr. Carnell also briefed the members on individual risk factors that could play a part in physician behavior, such as childhood trauma and maladaptive beliefs. After her presentation, Dr. Carnell fielded questions from the Board members.

New Business:

1) Regulatory and Legislative Issues

- **Chart of Regulatory Actions**

Ms. Yeatts provided an update on the emergency regulations for physician assistants that will eliminate the term supervision and HB2559 – Waiver for electronic prescribing which will go into effect in 2020. This report was for informational purposes only and did not require action.

- **Response to petition for rulemaking**

Ms. Yeatts spoke to the petition for rulemaking submitted by Dr. Luke Vetti. He requested to add the American Board of Podiatric Medicine to the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic, 18 VAC 85-20-10 et seq., specifically 17 VAC 85-20-141 "Licensure by Endorsement," section 4 and 18 VAC85-20-350 "Informed consent", section B. She noted that the 3 comments received were in support of this proposed amendment. The Legislative Committee's recommendation to the Board was to accept the petition.

---FINAL APPROVED---

MOTION: After a brief discussion, Dr. Ali moved to accept the recommendation of the Legislative Committee to initiate rulemaking and adopt amendments by a fast-track action. The motion was properly seconded and carried unanimously.

- **Legislative Proposal**

Ms. Yeatts explained that this proposal is to remove outdated language in §54.1-2909 that references an agreement for an Impaired Physicians Program and include updated language that references the Health Practitioners' Monitoring Program. Ms. Yeatts also said that the reporting requirement for presidents of all professional societies is redundant of language found in 54.1-2908, so it can be deleted from 2909.

MOTION: After discussion, this proposal was approved by acclamation.

- **Legislative Proposal – Athletic Trainers**

Ms. Yeatts reported that the Advisory Board on Athletic Trainers identified the need to amend the Drug Control Act to gain authority for athletic trainers to possess and administer naloxone in emergencies involving opioid overdoses.

Dr. Archer asked if athletic trainers could be added to section 54.1-3408 X.

Ms. Yeatts said that section X was amended by the 2019 General Assembly to include authorization for naloxone. In section X, practitioners and non-health care providers are authorized to administer and dispense. The athletic trainers are asking to possess and administer. Since athletic trainers are already listed in section F, amending F would be practical choice.

Dr. Archer stated that it is redundant to place it in F. He believed athletic trainers should be added to the list of those authorized in X. Additionally, he asked what training do athletic trainers have?

Ms. Yeatts stated that all non-professionals need training, and they can get it from CVS. There is little rationale that athletic trainers may need training when they already have the knowledge to administer epinephrine.

Dr. Stokes added that the athletic trainer administering the naloxone will be working with a physician.

Ms. Deschenes reiterated that anyone can obtain naloxone. Some of the athletic trainers were individually obtaining it to help with life-saving issues that occur in the schools. However, because of personal liability and liability of the school that employs them, they thought it best to have naloxone added to 54.1-3408(F).

MOTION: With no further discussion, Dr. Walker moved to adopt the legislative proposal as presented. The motion was properly seconded and carried unanimously.

2) Licensing Report

Dr. Harp introduced the licensing specialists to the Board and acknowledged them for the work done this year while understaffed and without a Deputy for Licensure. He announced that as of June 12th, 7,000 initial applications had been issued in the past 12 months.

---FINAL APPROVED---

Dr. Harp also announced that Michael Sobowale, the new Deputy Executive Director for Licensure, will be joining the Board on July 25th. Mr. Sobowale is coming from another state health regulatory board with licensing experience and a law degree. Mr. Sobowale will be a tremendous asset to the Board.

Dr. Harp then reviewed the licensure by endorsement process and provided information on the average number of days to licensure by the Interstate Medical Licensure Compact. He is confident that the Board will be able to provide expeditious licensure to all applicants that qualify. He explained that the BOM has been allowing applicants to switch tracks from traditional to endorsement within 30 days of the traditional application being filed. Dr. Harp asked the Board to approve that switching of paths no longer be an option at the end of June. The Board agreed with the plan as described.

Dr. Harp presented information on the training programs for radiologic technologists-limited and the number of hours reported by the programs to cover competency. He recommended that, for now, applicants should be asked to attest to the number of training hours rather than having the hours reported by the program. The Board agreed with this approach.

3) Discipline Report

Ms. Deschenes presented the numbers for Discipline and reviewed the change to the mandatory suspension statute (54.1-2409) that will allow the agency “to not suspend” licensees who fall under a reciprocal action cycle. Presently, a licensee suspended in another state based on disciplinary action imposed by the Virginia Board of Medicine has to then be suspended by Virginia. The change in the law allows DHP “to not suspend” when the other state is acting solely on an action taken by the Virginia Board of Medicine.

4) Comment on the Opioid Regulations and PMP

Dr. Harp provided the following background information in the agenda packet.

The Centers for Disease Control and Prevention published its Guideline for Prescribing Opioids for Chronic Pain in March 2016. An outline of the principles in the Guideline was sent to Virginia prescribers in May 2016. The Board began to get questions from its licensees about the prescribing of opioids. In March 2017, the Board of Medicine regulations for the prescribing of opioids and buprenorphine became effective. Since that time, the Board has gotten communications from patients and physicians about proper prescribing. Patients would express concern that their dose that had them stable and functional for years was being cut. Board staff that attended medical meetings became aware that the majority of physicians had not read the regulations to understand the great latitude that prescribers have with the dosing of opioids. The Board’s Continuing Education Committee met in the fall of 2018 to determine who would be required to obtain opioid continuing education for the next biennium. It also considered what continuing education would be required. Two suggestions to address the mythology around opioids and provide education on effective tapering were offered—1) read the regulations, and 2) the Stanford University course on tapering chronic opioids. This 2-hour “package” was provided to all the Board’s licensees, including nurse practitioners. Still the Board gets communications from patients. Two recent communications are included for your review. The first is a request from Sydney Rab that the Board reconsider its regulations, followed by a response from Dr. Harp, and an advocacy blog. The second is commentary on the Prescription Monitoring Program’s thresholds for identifying unusual patterns of prescribing from Kristen Ogden. Ms. Ogden’s e-mail follows the material related to the first request. The Board of Medicine does have input into the thresholds.

---FINAL APPROVED---

Dr. Harp noted this issue had been before the Legislative Committee on May 15th, and it recommended to the Board that no change in the regulations be made.

After a brief discussion, Dr. Edwards moved that the Board take no action; the motion was seconded and carried unanimously.

5) Report of the Nominating Committee

Dr. Walker presented the recommended slate of officers: President-Ray Tuck; Vice-President-Lori Conklin; Secretary/Treasurer-Blanton Marchese. No nominations arose from the floor. The vote to approve the slate of officers was unanimous.

6) Announcements

Next meeting date of the Full Board is October 17-19, 2019.

Travel vouchers for today's meeting should be submitted no later than July 15, 2019.

7) Adjournment

With no other business to discuss, Dr. O'Connor adjourned the meeting of the Full Board at approximately 11:45 AM.

Ray Tuck, Jr., DC
President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary