

**VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES**

Friday, May 20, 2016 Department of Health Professions Henrico, VA

CALL TO ORDER: The meeting convened at 8:35 a.m.

ROLL CALL: Ms. Opher called roll, but a quorum was not established until 8:41 a.m.

MEMBERS PRESENT: Barbara Allison-Bryan, MD, Vice-President, Chair
Syed Salman Ali, MD
Lori Conklin, MD
Ray Tuck, DC

MEMBERS ABSENT: David Giammittorio, MD
The Honorable Jasmine Gore
Maxine Lee, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director, Discipline
Alan Heaberlin, Deputy Director, Licensure
Barbara Matusiak, MD, Medical Review Coordinator
Colanthia Morton Opher, Operations Manager
Lynn Taylor, Discipline Administrative Assistant
Sherry Gibson, Administrative Assistant
David Brown, DC, Agency Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: W. Scott Johnson, HDJN
Kirsten Roberts, MSV
Mike Jurgensen, MSV

EMERGENCY EGRESS INSTRUCTIONS

Dr. Allison-Bryan provided the emergency egress instructions.

ADOPTION OF AGENDA

The agenda was amended to include approval of the May 15, 2015 meeting minutes that were not approved at the January meeting due to the lack of a quorum.

APPROVAL OF MINUTES OF MAY 15, 2015 and JANUARY 13, 2016

Dr. Conklin moved to approve the meeting minutes of May 15, 2015 as presented. The motion was seconded and carried unanimously.

Dr. Ali moved to approve the meeting minutes of January 13, 2016 as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT

There was no public comment.

FURTHER COMMENT

Elaine Yeatts announced that she and Dr. Brown recently met with the Office of the Secretary of Health and Human Resources and learned that the office-based anesthesia regulations had been approved at that level; they will be forwarded to the Governor for approval.

Dr. Allison-Bryan acknowledged Mike Jurgensen's retirement from the Medical Society of Virginia and remarked that his integrity, communication skills, institutional knowledge on office-based anesthesia, and commitment to the quality of care in Virginia will be missed. Mr. Jurgensen received a standing ovation from the Committee members and Board staff.

NEW BUSINESS

Interstate Medical Licensure Compact

Ms. Barrett began the discussion by noting some concerns from a legal perspective. When the licensure Compact was first presented, it was described as being based on a model similar to the Nurse Licensure Compact. An application to the nursing Compact gives one a multi-state license in all states participating in the Compact unless a barrier issue is identified. The medical Compact requires physicians to obtain a license in every state in which they intend to practice. As such, participation in the Compact would require the Board to create and implement a new licensing process for those physicians applying through the Compact.

Ms. Barrett asked the members to consider the overall purpose of the Compact and whether or not it would be beneficial to the Commonwealth. Ms. Barrett referred to SECTION 8 (b) COORDINATED INFORMATION SYSTEM that reads –

Notwithstanding any other provision of law, member boards shall report to the Interstate Commission any public action or complaints against a licensed physician who has applied or received an expedited license through the Compact.

Ms. Barrett remarked that the Board receives a significant number of complaints that are non-actionable and currently mandated confidential. This provision would require the Board to report complaints which might raise confidentiality concerns as well as needing an amendment to 54.1-2400 for authorization to meet this provision of the Compact.

SECTION 10 – DISCIPLINARY ACTIONS

(d) – If a license granted to a physician by a member board is revoked, surrendered or relinquished in lieu of discipline, or suspended, then any license(s) issued to the physician by any other member of the board(s) shall be suspended automatically and immediately without further action necessary by the other member board(s), for ninety (90) days upon entry of the order by the disciplining board, to permit the member board(s) to investigate the basis for the action under the Medical Practice Act of that state. A member board may terminate the automatic suspension of the license it issued prior to the completion of the ninety (90) day suspension period in a manner consistent with the Medical Practice Act.

Ms. Barrett said that this language would override the language of §54.1-2409 Mandatory suspension or revocation; reinstatement; hearing for reinstatement, which currently requires the practitioner to apply to the Board for reinstatement of the license. Further, the Compact language would shift the burden of proof and the processing timeline from the respondent to the Board.

Ms. Yeatts pointed out that, based on the definition of “current significant investigative information” in the Nurse Licensure Compact, investigative information indicating that the nurse represents an immediate threat to public health and safety is reportable, not complaints.

Ms. Barrett advised that if the Board wishes to craft new language, she recommended the word “complaint” be removed.

Dr. Harp, speaking to the process and fiscal impact, advised that he spoke with the Chair of the Compact Commission who was not yet able to say how the application process would be implemented and how the fees would be structured and distributed.

Dr. Tuck questioned the process of the Commission collecting the licensing fees for the boards and then distributing them when it appears that the boards will be responsible for the lion’s share of the work done in the new process. Ms. Yeatts advised that the Nurse Compact language was written so that all fees stay in Virginia.

Mr. Heaberlin advised that he ran a statistical report on approximately 110 license applicants and found that only 37 would have been eligible to participate in the Compact. He recalls at the introduction of the process being told that 80% of applicants would benefit from this option. Mr. Heaberlin noted that he does not see participation in the Compact as beneficial for Virginia. He also pointed out that with so many postgraduate programs in Virginia, the intern/residents would not be eligible for Compact licensure because they are not board certified. Mr. Heaberlin also noted that he reviews a significant percentage of

applications that have “criminal convictions” for incidents that occurred, usually prior to or in medical school, such as DUI, reckless driving, cursing in public, and even one for dogs running loose without dog tags. He questioned whether such offenses should prevent eligibility for an expedited licensure process.

Mr. Heaberlin questioned the protocol for an applicant who chooses Virginia as his home state and applies to another Compact state and Virginia’s responsibility for completing yet another criminal background check in support of a letter of qualification.

Dr. Brown asked for clarification on the “expedited process” and what typically holds up the application process.

Mr. Heaberlin explained the Federation Credentialing Verification Service (FCVS) is a repository for all static documents. For a fee, FCVS will forward that information to the state to which you are applying. What causes the processing delay are employment verification forms required from each employer for the last five years and the verifications from other state boards. These items are essential to the licensing process and neither will be hastened by the Compact. It will still be up to the applicant to see that these items are sent to the Board.

During the Committee’s discussion about the benefit of participating in the Compact, Ms. Deschenes stated that, based on the discussions surrounding the creation of a national license, FSMB started looking for ways to enhance license portability (which it had piloted for years) and to preserve the authority of the state medical boards. Ms. Deschenes advised that prior to her employment with the Board, there was language in the law that allowed for a reciprocal license but regulations had never been written. She suggested that the Committee consider the regulatory approach as an option. Regulations could allow an applicant with an unrestricted license and no disciplinary action to obtain an expedited license. The fees would stay in Virginia.

Elaine referred to §54.1-103. Additional training of regulated persons; reciprocity; endorsement.

A. The regulatory boards within the Department of Professional and Occupational Regulation and the Department of Health Professions may promulgate regulations specifying additional training or conditions for individuals seeking certification or licensure, or for the renewal of certificates or licenses.

B. The regulatory boards may enter into agreements with other jurisdictions for the recognition of certificates and licenses issued by other jurisdictions.

C. The regulatory boards are authorized to promulgate regulations recognizing licenses or certificates issued by other states, the District of Columbia, or any territory or possession of the United States as full or partial fulfillment of qualifications for licensure or certification in the Commonwealth.

Dr. Allison-Bryan advised that the Compact Commission is fairly large with 2 representatives from each jurisdiction and expressed some concern about the structure. A number of states that have signed on to the Compact are some of the less populous states in which patients sometimes have to drive long distances to see a physician. Dr. Harp noted that the Compact was also in response to states that wanted to utilize telemedicine to enhance access to care. Physicians who provide telemedicine and communications companies have lobbied for greater license portability, be it a national license or through expedited licensure by state boards.

Dr. Brown suggested that the identified issues and concerns be communicated to the Commission to signal the Board's hesitancy of signing onto the Compact without knowing all of the details. Dr. Brown also suggested that a representative from FSMB be asked to come back and update the Board on the progress of the Compact.

Dr. Allison-Bryan posed the question of "what are Virginia's needs and how do we address the expedited process without entering into the Compact?"

After a brief discussion, Dr. Allison-Bryan stated that she does not see inviting a representative from FSMB to speak to the Board as fruitful; however, we should send them correspondence advising them of our position and why.

Dr. Conklin moved to recommend to the Full Board that it not adopt the Interstate Medical Licensure Compact. The motion was seconded and carried unanimously.

Dr. Ali moved to recommend to the Full Board that the current licensure process be reviewed and the issue of reciprocity be explored for the purpose of addressing an expedited process in place of the Compact.

With the Committee agreeing that access was at the forefront of this issue, Dr. Tuck suggested that two work groups be created, one to review the expedited licensure process and the second to evaluate how to improve access to services.

Dr. Tuck and Dr. Ali both agreed to serve on work groups to address these issues.

Dr. Ali moved to recommend to the Full Board that it create an ad hoc committee to study how the Board might, through its licensure processes, reciprocity with other states, and other innovative ways, address the issue of improving access to health care services across the state. The motion was seconded and passed unanimously.

ANNOUNCEMENTS

There were no additional announcements.

Next meeting – September 26, 2016

--- FINAL APPROVED ---

Adjournment - With no other business to conduct, the meeting adjourned at 10:35 a.m.

Barbara Allison-Bryan, MD
Vice-President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary