

BOARD OF COAL MINING EXAMINERS

SUMMARY OF MEETING

NOVEMBER 5, 2013

The following is a summary of the November 5, 2013 Meeting:

- I. Meeting called to order at 9:02 AM by Randy Moore, Chairman. Members present were Randy Moore, Ricky O'Quinn and Phillip Hale. Member Gerald Kendrick was absent. Also present were Mary Gibson, Regulatory Boards Administrator, and Sharon Pigeon, Sr. Assistant Attorney General.**
- II. Opening statement delivered by Randy Moore, Chairman.**
- III. Motion made and seconded to accept November 5, 2013, meeting agenda and approve September 10, 2013, meeting summary. All members were in favor to approve.**
- IV. Review of Virginia Substance Abuse Cases (Closed Session)**

Of the cases that resulted in hearings, evidence was taken by the Board in closed session, pursuant to Virginia Code §§ 2.2-3711(A)(4) and 45.1-11.35(E). In the closed session, the Board worked out agreements, allowing individuals to return to work conditionally, and took other disciplinary actions including revocation of all certifications held by miners.

V. Open Agenda

Mary Gibson informed the Board that Chief Moore recently sent a letter to Cleco Corporation correcting a previous letter to them in which there was a misuse of initial testing in reference to taking drug tests and doing a quick test.

Ms. Gibson provided the Board with the draft revised application for certification examination form upon the request by the Board that applicants certify that they have no violations in any other state. After review of the revision, the Board recommended that the word "personal" violations be added for clarification purposes. Ms. Gibson will pursue having this revised form registered with DMME policy and procedures group.

Ms. Gibson provided the Board with copy of the six-month report on funds received by the DMME under the OxyContin Grant fund submitted to the

Office of the Attorney General and providing expenditure data and summary of actions related to substance cases. The Board recommends continuing to pursue applying as a recipient for funds from any pharmaceutical settlement related to problems experienced in the mining industry.

Chief Moore informed the Board that one coal company asked him to speak to the Board on whether companies are required to send quick tests performed for pre-employment drug testing to a laboratory for analysis. The Division of Mines previously has written violations for companies not sending the initial quick test, considered as the pre-employment test, to the lab for analysis. The Board continues to agree that all pre-employment screenings must be submitted to SAMHSA labs as outlined in the Virginia Coal Mine Safety Act 45.1-161.87.

Chief Moore inquired to counsel and the Board if the operators' employees could actually do the pre-employment screening. According to the U.S. D.O.T. Rule 49CFR Part 40, Section 31c, the immediate supervisor cannot act as the collector. Counsel advised the Board that as long as it was not the individual's immediate supervisor, the agent of the company could be the collector. Changes from following the D.O.T. rule would have to be pursued through a coal mine safety law change by DMME.

VI. Next Meeting

Next meeting will be December 3, 2013.

VII. Adjournment

Meeting adjourned at 3:07 PM.