---FINAL APPROVED---

VIRGINIA BOARD OF MEDICINE
EXECUTIVE COMMITTEE MINUTES

Friday, December 7, 2012 Department of Health Professions Henrico, VA

CALL TO ORDER: The meeting convened at 8:45 a.m.

MEMBERS PRESENT: Valerie Hoffman, DC, President
Stuart Mackler, MD, Vice-President
Wayne Reynolds, DO, Secretary-Treasurer
Stephen Heretick, JD
Jane Piness, MD

MEMBERS ABSENT: Claudette Dalton, MD
Jane Maddux
Karen Ransone, MD

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

OTHERS PRESENT: Tyler Cox, MSV
Bethany Marcus, PhD, Children First
Jerry Canaan, HDJN
David Falkenstein, PA, VAPA

Call to Order

Dr. Hoffman called the meeting to order.

Roll Call

A quorum was declared.

Emergency Egress Procedures

Dr. Mackler provided the emergency egress procedures.

Adoption of Agenda

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

Public Comment on Agenda Items

Dr. Hoffman welcomed the public in attendance and then opened the floor for comment. There was no public comment.

Approval of the August 3, 2012 Minutes

Dr. Mackler moved to approve the minutes as presented. The motion was seconded and carried unanimously.

New Business

Regulatory Matters

Chart of Regulatory Actions

Ms. Yeatts reviewed the status of the eight regulations in process as of November 27, 2012, three of which are emergency regulations that must be in effect before the end of the year. Ms. Yeatts then informed the members that Dr. Reynolds held a public hearing on the *Regulations Governing the Practice of Physician Assistants* on Thursday, December 6th for the purpose of receiving comment regarding the elimination of the requirement for supervising physicians to see a patient every 4th visit. Ms. Yeatts stated that there was no comment received in opposition to the changes, and that the regulations with the proposed amendments will be presented to the Full Board February 21, 2013.

Adoption of Final Regulations – Correction of Code cites in regulations

Ms. Yeatts informed the Committee that Board staff recently reviewed all advisory regulations as part of the Governor's Regulation Reform Project, which is an effort to reduce or eliminate regulations if possible.

Ms. Yeatts said that staff found several Code cite errors in the regulations, most likely stemming from the change of the unprofessional conduct section from §54.1-2914 to 54.1-2915 several years ago.

Mr. Heretick moved to adopt the final amendments to the regulations as exempt actions. The motion was seconded and carried unanimously.

Regulations for Applied Behavior Analysts

Ms. Yeatts referred to the statutory language regarding the licensure of behavior analysts and assistant behavior analysts, the Emergency Regulations that went into effect September 19, 2012, the Notice of Intended Regulatory Action, and the comment received from the public.

Ms. Yeatts said that the two main concerns noted in the comment received had to do with supervision and unlicensed personnel. She pointed out that **18VAC85-150-130 Supervision of unlicensed personnel** says *"The use of carefully trained and well-supervised Behavioral Technicians* [*unlicensed professional and/or students training to become licensed professional] is a common practice in ABA treatment".* Ms. Yeatts stated that no matter what they are called, if they are not licensed, then the Board has no authority to regulate them.

Ms. Yeatts then stated that based on the extensive work done by the Workgroup and the fact that there was no comment received that would lead the Board to make additional changes to the regulations, she recommended that the emergency regulations currently in place be adopted by the Board as proposed regulations.

Dr. Mackler moved to adopt the proposed regulations as presented. The motion was seconded and carried unanimously.

Dr. Reynolds asked if there were any hot topics the Committee should be aware of before its next meeting in April. Ms. Yeatts advised that on the federal level there was a strong push to get tighter control of compounding activity and to eliminate the distinction as to where compounding occurs.

Dr. Harp advised that the Board of Pharmacy has looked at the eight-hour provision in Medicine's MDR regulations and how it exceeds the one-hour standard in USP Chapter 797. Dr. Harp stated that the General Assembly may be looking at requiring those doing MDR to conform to the one-hour standard to be synchronous with federal regulations.

Report of the Executive Director – William L. Harp, MD

Revenue and Expenditures Report

Dr. Harp noted that the Board is in good fiscal health.

MSV Foundation Recognitions

Dr. Harp and the Committee congratulated Dr. Reynolds on being recognized at the Annual Meeting of the Medical Society of Virginia by the MSV Foundation for outstanding "service to the uninsured and underserved".

Dr. Harp reported that Dr. Dalton was likewise honored for "service to the profession".

Dr. Reynolds stated that he was honored by the recognition, and he was in good company with Dr. Dalton and Dr. Hazel, who was recognized for "service to the Commonwealth for advancing patient safety and quality improvement".

Robert Hansen, MD – correspondence

Dr. Harp advised that he and Dr. Hansen had been communicating sporadically over the years, and that Dr. Hansen had shown an interest in serving as a resource to the Board on the topic of pain management.

Dr. Harp stated that the correspondence received from Dr. Hansen was in support of another pain management practitioner in his area, but it also voiced the concern of those practitioners in the pain management community about how the Board was addressing this issue.

Dr. Harp advised that he would extend an invitation to Dr. Hansen to be a presenter at its next retreat/workshop.

Enforcement/APD FY13 Expenditures

Dr. Harp reviewed the number of hours of investigative time paid for by the Board, noting that the Board of Nursing uses significantly more hours than Medicine. He pointed out that 1600 hours of investigative time is roughly equivalent to 10 FTE's. Due to the complexity of Medicine's cases, the Board pays APD for approximately three times as many hours as Nursing. The APD hours roughly equate to 3.5 FTE's.

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

National Licensure

Dr. Harp informed the Committee that Congress is looking at the feasibility of some sort of national licensure for healthcare providers, an initiative spearheaded by advocates of telemedicine and license portability. He said that most state boards and the Federation of State Medical Boards have reservations about this effort.

Dr. Harp said that to be proactive and develop ways to improve licensure mobility between states, FSMB will host a meeting of all state boards January 16-17, 2013 in Fort Worth. To encourage attendance, FSBM has offered to cover the expenses of the Board president and Board executive. Dr. Hoffman indicated she will not able to attend.

Dr. Hoffman asked the members to check their calendars and advise Dr. Harp if they are interested in attending in her stead.

§54.1-2901(A)(15) – Application of the consultant exemption

Dr. Harp asked the Committee for guidance on how this statute should be interpreted for out-of-state practitioners inquiring about providing services on more than one occasion within the Commonwealth.

Dr. Harp advised that it has been the practice of Board staff to inform those who inquire about the consultant exemption to say that it applies to occasional services, not ongoing ones. If ongoing services are anticipated, a license would be necessary.

After discussion, the Committee agreed that how Board staff was currently applying this regulation was accurate, and no change in the interpretation was needed. The first visit may fall under the exemption, but repeated visits after that would require the practitioner to obtain a Virginia license.

FSMB – State Board Sponsorship Role in USMLE Step 3

Dr. Harp advised that when he arrived at the Board in 2000, there was a requirement for residents seeking to take Step 3 to pay $85 to register through the Board. The $85 seemed like a lot to ask just to forward an application to FSMB/NBME. The requirement for the $85 was discontinued, and residents were directed to apply directly to FSMB/NBME. Coincident with changes to Step 3, the processes vis-à-vis the state boards are being reviewed. FSMB/NBME seeks the answers to the following questions.

1. Does your state board wish to see the current sponsorship model continue for Step 3?

2. Are there statutes or board rules/regulations you would have to amend if the state board sponsorship for Step 3 were discontinued?

3. If yes to question #2, do you feel this could be done by mid-2014?

After discussion, the members agreed that the Board should take no role in authorizing an individual to sit for Step 3, that NBME rules should prevail, and that this change could occur without any change to the Board's regulations. Board staff will convey these comments to FSMB.

FSMB – Model Policy on the Appropriate Use of Opioid Analgesics in the Treatment of Pain, and Model Policy on Opioid Addiction Treatment in the Medical Office

Dr. Harp informed the members that these two policies are re-writes done in March/April of this year, and that Virginia was able to contribute to the process.

FSMB is now asking the Boards to consider the following:

1. Does the statement provide adequate guidance to practitioners in your state?

2. Does the statement afford sufficient latitude to the Board in executing its responsibilities?

3. Does the statement fairly balance the interests of patients with the Board's obligation to protect the public safety?

4. Is there any other information you think the statement should incorporate?

Dr. Harp said that he anticipates that the Board will adopt these as guidance documents in the future.

The Board had no suggested revisions.

Discipline Report

Ms. Deschenes reminded the Committee of the hearing scheduled to begin after Executive Committee adjournment.

Announcements

Dr. Harp informed the Committee that Alan and he had attended a meeting of the graduate medical education directors from across the Commonwealth to discuss renewal of training licenses. Dr. Harp commended Alan on the good job he did in the meeting.

Next scheduled meeting: April 5, 2013

Adjournment: With no other business to conduct, the meeting adjourned at 9:25 a.m.

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Valerie Hoffman, DC, President
President

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William L. Harp, M.D.
Executive Director

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Colanthia Morton Opher
Operations Manager