---DRAFT APPROVED---

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

Thursday, October 24, 2013 Department of Health Professions Henrico, VA

PUBLIC HEARING

At 8:51 AM, Dr. Mackler called to order a hearing to receive public comment on proposed regulations 18VAC85-150-10 et seq. – Regulations Governing the Practice of Behavior Analysis.

Bethany Marcus, Ph.D. expressed her support for the regulations and also her concern about the oversight and supervision of assistants and technicians, billing practices, and composition of an advisory board were one to be established. Dr. Marcus also provided the Board her written comments.

Michael Chiglinsky, Ph.D. spoke on behalf of the Virginia Academy of Clinical Psychologists and advised that it fully endorses the comments and concerns identified by Dr. Marcus. Additionally, he requested that consideration be given to: 1) specifying the number of assistants that can be supervised simultaneously; 2) establishing a minimum of face-to-face time that each supervisor must spend with each patient; and 3) setting on-site requirements during delivery of professional services. Dr. Chiglinsky also provided the Board his written comments.

James Monroe, Ph.D. expressed concern about the proposed regulations. Dr. Monroe remarked that the BACB stated that the practice of behavior analysis does not appear to appropriately fall within the mandates of the Board of Medicine and that perhaps this charge should fall under the Department of Education. Dr. Monroe provided the Board his written comments.

After all signed up had spoken, Dr. Mackler stated that the comment period would close on December 6, 2013. Any additional written comments should be forwarded to Dr. Harp or posted on the Virginia Regulatory Townhall website.

The public hearing on the proposed regulations concluded at 9:15 AM.

CALL TO ORDER: Dr. Mackler called the meeting of the Board to order at 9:16 AM.

ROLL CALL

MEMBERS PRESENT: Stuart Mackler, MD, President
Wayne Reynolds, DO, Vice-President
Kenneth Walker, MD, Secretary-Treasurer
Syed Ali, MD
Randy Clements, DPM

Siobhan Dunnavant, MD
Irina Farquhar, PhD
Deborah DeMoss Fonseca
David Giammittorio, MD
Stephen Heretick, JD
Robert Hickman, MD
Valerie Hoffman, DC
William Hutchens, MD

MEMBERS ABSENT: Barbara Allison-Bryan, MD
Lori Conklin, MD
Kamlesh Dave, MD
Jane Maddux

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Alan Heaberlin, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Pam Smith, Licensing Specialist
Dianne Reynolds-Cane, MD, DHP Director
Arne Owens, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst

OTHERS PRESENT: Tyler Cox, MSV
Jerry Canaan, HDJN
Bethany Marcus, Ph.D.
Michael Chiglinksy, Ph.D., VACP
Lindsay Walton, VOTA
Bo Kenney, VACP
James Pickral, VPhA

EMERGENCY EGRESS PROCEDURES

Dr. Reynolds read the emergency egress procedures for Conference Room 2.

APPROVAL OF THE JUNE 20, 2013 MINUTES

Dr. O'Connor moved to accept the minutes of June 20, 2013. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

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

INTRODUCTION OF NEW BOARD MEMBERS

The Board welcomed newly-appointed Board members Syed Ali, MD, Deborah DeMoss Fonseca, and David Giammittorio, MD. Each gave a brief self-introduction.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Mackler acknowledged and welcomed the guests that were present.

There was no public comment on the agenda items.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Dr. Cane advised that DHP had submitted a legislative plan to the Governor's Office for inclusion in the 2014 General Assembly packet and is waiting on a determination as to whether it will be introduced. She also informed the members that DHP was one of six entities chosen by the National Governors' Association to be awarded funding to develop a licensure plan for military families transitioning to civilian life. Dr. Cane noted that this plan is currently geared towards the LPN, EMT and PTA professions. She also advised that she will be addressing the Virginia Senate about Medicare mapping in the next couple of weeks.

PLAQUE PRESENTATIONS

After Dr. Cane's report, Mr. Heretick eloquently praised Dr. Cane and presented her with a service plaque from the Board of Medicine expressing its appreciation for her first four years of service as DHP Director. She thanked everyone for their thoughtfulness and consideration.

Mr. Heretick also presented a service plaque to Howard Casway, Sr., Attorney General in absentia, acknowledging his 30+ years of exceptional service with DHP.

Dr. Hoffman presented Dr. Mackler a gavel plaque commemorating his current position as President of the Virginia Board of Medicine.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Mackler had no report.

VICE-PRESIDENT'S REPORT

Dr. Reynolds reported that the USMLE program has determined that each exam step will be limited to six attempts and that USMLE is committed to working on security issues at non-American testing sites. Dr. Reynolds advised that a formal report will follow. He also acknowledged the good work of the staff in keeping the Board's expenses under control. He further stated that with a healthy surplus, the Board would be voting on a fee reduction for its licensees a little later on the agenda.

SECRETARY-TREASURER'S REPORT

Dr. Walker had no report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reported that the Board is solvent with a cash balance of $6,904,251 as of September 30, 2013. Dr. Harp also noted that there will be a 14% decrease in renewal fees across the board for one renewal cycle beginning in January 2014.

- Health Practitioners Monitoring Program Statistics

Dr. Harp noted the total number of Medicine participants in the program to be 103 with 71 MDs. This report was for informational purposes only. No action was required.

- New Law allowing Electronic Meetings under FOIA

Dr. Harp informed the Board that **§2.2-3708. Electronic communication meetings; applicability; physical quorum required; exceptions; notice; report** will allow advisory boards to hold an electronic meeting when a physical quorum is not able to be established. However, members may need to open their homes to the public, the meeting would need to be taped, and the tape preserved to meet FOIA requirements.

- FY2014 First Quarter Key Performance Measures

For the benefit of new Board members, Dr. Harp explained the components of the key performance measures highlighting the rise and fall of the Board's case closure numbers. Dr. Harp acknowledged the hard work by Dr. Matusiak and the Board members for their time and effort in probable cause review which has the Board at a 100% clearance rate.

- Update on the Virginia Prescription Monitoring Program

Dr. Harp briefly reviewed the statistics provided by Ralph Orr, Director, Prescription Monitoring

Program, and noted that they expect to process greater than 1.2 million requests for calendar year 2013. Dr. Harp also pointed out that the program added over 3,000 registered users at the beginning of 2013 due in part to the inclusion of Tennessee pharmacists. Dr. Harp stated that Mr. Orr is working diligently to partner with more states with which to reciprocate access to data.

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

- Trust for America's Health (TFAH) article on Prescription Drug Abuse

Dr. Harp pointed out that prescription drug abuse has become a top public health concern of the TFAH, and that according to the report, prescription drug-related deaths now outnumber illicit drug deaths. Dr. Harp also noted that Virginia ranked 48th out of 51 jurisdictions in the rate of drug overdose deaths at 6.8 per 100,000. Only Nebraska, North Dakota and South Dakota had lower rates.

- Medicaid Workforce Maps

Dr. Cane had referred to these in her presentation.

- Consensus Principles for an Interstate Compact for Medical Licensure

Dr. Harp advised that Congress is currently looking for a way to facilitate telemedicine across state lines; state boards of medicine are seen as somewhat of an impediment. HR3077 has just been introduced. It would authorize a Medicare provider to provide care to a Medicare beneficiary regardless of whether the provider is licensed in the patient's state or not. Dr. Harp said the Federation of State Medical Boards has been proactive in regards to telemedicine and license portability for years. FSMB is currently working to get an interstate compact solution to this matter rather than have Congress pass legislation that would dramatically change the landscape of medical regulation in the United States.

Mr. Heretick advised that the concept of using an interstate compact is the oldest form of government we have. He said that each state would be allowed to judge for itself whether or not to join with another state; one size does not fit all. He also said that the physician would be subject to disciplinary action from the states in which the patient resides. He further noted that FSMB asked for and got a meeting with Representative Charles Boustany, Chair of the Health Subcommittee of House Ways and Means in the middle of budget negotiations to discuss this model. Mr. Heretick noted that this issue is evolving at a rapid rate.

The chair called for a break and the meeting reconvened at 10:17 a.m.

- Board Member/Staff Participation at FSMB

Dr. Harp reviewed the service contributions of Board members and staff to the Federation of State Medical Boards. Dr. Harp stated that staff will begin sending out notices about upcoming webinars for interested Board members.

- FSMB Call for Elected Positions

Dr. Harp encouraged anyone interested in serving on the FSMB Board of Directors or Nominating Committee to apply. He reminded the Board members of their status as a Fellow of FSMB while on the Virginia Board of Medicine and for 3 years after they rotate off the Board.

- FSMB Call for Appointed Positions

Dr. Harp suggested for those not interested in an elected position to consider serving on one of FSMB's committees. He noted that Dr. Reynolds is currently active on the Bylaws, Audit, and Editorial committees. Dr. Reynolds added that it is a great opportunity without too much meeting time, and it keeps Virginia visible at the national level.

- Letter of Comment on Maintenance of Licensure from Jerome M. Parsons, MD

Dr. Harp pointed to the correspondence from Dr. Parsons in which he asks how the Maintenance of Licensure pilot will improve the quality of care provided by a practitioner. Dr. Harp reminded the Board that it had agreed to help out with the FSMB pilot process by 1) helping to figure out how to integrate MOL into the license renewal process, 2) by taking a readiness survey, and 3) by reviewing outreach material prepared for the public, the medical community and others. So far, only the second item has been accomplished.

Committee and Advisory Board Reports

Dr. Harp reviewed the updated Committee assignments and asked that any questions or concerns be addressed to him or Dr. Mackler.

Ms. Barrett asked that minor changes be made to the August 2, 2013 draft Executive Committee minutes.

Dr. Reynolds moved to accept the committee reports en bloc with the suggested change to the Executive Committee meeting minutes. The motion was seconded and carried unanimously.

Other Reports

Assistant Attorney General

Ms. Barrett provided an update on legal matters concerning Dr. Vuyyuru, Dr. Petrie, and Dr. Clowdis.

No action was required by the Board.

Board of Health Professions

Dr. Farquhar had no report.

Podiatry Report

Dr. Clements advised that the American Board of Lower Extremity Surgery (ABLES) is approaching the General Assembly to request having their certification added to the list of certifying bodies for podiatrists. Dr. Clements noted that the ABLES certification process appears to be as rigorous as the other board certifications currently accepted.

Chiropractic Report

Dr. Hoffman had no report.

Joint Board of Nursing and Medicine

Dr. Hickman had no report.

Regulatory and Legislative Issues

- Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of pending regulations. She advised that we are still awaiting approval for a few; however a number have been approved, including the Regulations Governing the Practice of Midwifery - Disclosure Requirements for High-Risk Pregnancies. Ms. Yeatts stated that what remains to be done is the development of a joint statement that represents both the medicine and midwifery communities. Ms. Yeatts then advised that the proposed draft document will be presented at the Executive Committee on December 27, 2013 for adoption.

Ms. Yeatts informed the Board that the emergency regulations for Behavior Analysts were extended until March 20, 2014. With the comment period closing December 6th, the meeting of the Executive Committee has been moved to the 27th to accommodate the regulatory process.

Ms. Yeatts also pointed out that the law establishing the Practice of Behavior Analysts was passed without establishing an advisory board. Therefore, once comments have been received, the ad hoc committee that helped developed the regulations may need to reconvene to review the comments prior to the Board's Executive Committee meeting December 27th.

- Response to Petition for Rulemaking

Ms. Yeatts acknowledged the Petition for Rulemaking received from Melody Cartwright in which she requests consideration be given to requiring chiropractors to use digital x-rays when

treating and diagnosing curvature of the spine. Ms. Yeatts pointed out that the comment period on this petition was open from July 29-August 28, 2013, and there were no comments received.

After discussion the Board agreed to decline the petition based on there being no evidence to support an improved outcome from using digital x-rays instead of film x-rays, no evidence that the recommendation would enhance the standard of care expected of all members of the profession, and that regulations should not be written in a disease-specific fashion. Dr. Hickman officially offered the motion and it was seconded and carried unanimously.

- Adoption of Regulations for Collaborative Practice Agreements

Ms. Yeatts informed the Board that the proposed regulations were jointly promulgated by an ad hoc committee constituted from the Boards of Pharmacy and Medicine on August 20, 2013. Ms. Yeatts stated that the recommended amendments to 18VAC110-40-10 et seq. simply conform the regulations to the changes in the statute.

Dr. Hoffman moved to adopt the amendments to 18VAC110-140-10 et seq., Regulations Governing Collaborative Practice Agreements by an action exempt from the provisions of the Administrative Process Act. The motion was seconded and carried unanimously.

- Virginia Board of Medicine and Accommodations for USMLE Testing

Dr. Harp presented the Executive Committee's recommendation from its meeting on April 5, 2013 to allow requests for testing accommodations on USMLE Step exams to be handled by the Federation of State Medical Boards.

After a brief discussion, Dr. Reynolds moved to accept the recommendation of the Executive Committee as presented. The motion was seconded and carried.

- Consideration of Proposed Guidance Document

Dr. Harp reminded the Board that at its February 21, 2013 meeting, it voted to accept the USMLE program's new policy that attempts at Step 3 be limited to six with an allowance for one additional attempt if approved by an interested board of medicine. Ms. Yeatts had suggested that a guidance document be drafted to that effect. Dr. Harp presented a proposed guidance document that stated the Board's policy would be to grant no additional attempts on any of the USMLE Step Exams. Dr. Hoffman moved to accept the guidance document as presented. The motion was seconded and carried unanimously.

- Updated FSMB Model Policy on the Use of Opioid Analgesics in the Treatment of Chronic Pain

Dr. Harp presented the updated FSMB Model Policy and asked the Board to consider adoption or

referral to the Legislative Committee for review and recommendation. Dr. Harp added that there are two other model policies on the use of social media and telemedicine that will be reviewed at the January Legislative Committee.

Dr. Hoffman moved to accept the updated policy as new Guidance Document 85-24, that it be published on the Board's website, and its existence be communicated to the public. The motion was seconded.

After further discussion, Dr. Dunnavant asked about partnering with MSV to have the Guidance Document communicated to its membership.

After discussion, the motion was accepted unanimously.

Licensing Report

Mr. Heaberlin provided the license count as of October 16th and reviewed the licensing statistics, highlighting the number of licenses issued by the Board between the dates of October 2012 to September 2013.

Mr. Heaberlin then presented the data gathered at the request of the Executive Committee regarding late renewals for the purpose of determining if further action is required.

After discussion, the Board decided to take no action.

Mr. Heaberlin informed the Board that the grace period for licensing behavior analysts and assistant behavior analysts expired September 18, 2013, so anyone applying now that has been practicing in Virginia without a license will be issued a consent order for unlicensed practice.

Mr. Heaberlin reported that the Federation of State Medical Boards has requested that the Board begin accepting FCVS packets for physician assistants. He reminded the Board that it currently accepts FCVS packets for applicants in medicine and surgery and osteopathic medicine and surgery.

After discussion, Dr. Hickman moved to accept, but not require, the use of FCVS packets for physician assistants. The motion was seconded and carried unanimously.

Discipline Report

Ms. Deschenes provided an overview of the case review process and case statistics.

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

Announcements

Dr. Dunnavant requested that Board members be provided with Board member bios. Dr. Harp suggested this be a project for the agency's communication officer, Diane Powers. Dr. Harp will

contact Ms. Powers regarding this request.

Credentials Committee Recommendations

Mr. Heaberlin provided a copy of the Credentials Committee's recommendation for review. Dr. Hutchens moved to accept the recommendation as presented. The motion was seconded. The final vote was 8 to five to ratify.

Adjournment: With no other business to conduct, the meeting adjourned at 11:50 a.m.

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Stuart Mackler, M.D.
President, Chair

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William L. Harp, M.D.
Executive Director

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Colanthia M. Opher
Recording Secretary