

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

February 18, 2016

Department of Health Professions

Henrico, VA

**CALL TO ORDER:** Dr. Walker called the meeting of the Board to order at 8:39 A.M.

**ROLL CALL:** Ms. Opher called the roll. A quorum was established.

**MEMBERS PRESENT:** Kenneth Walker, MD, President  
Barbara Allison-Bryan, MD, Vice-President  
Kevin O'Connor, MD, Secretary-Treasurer  
Syed Ali, MD  
Randy Clements, DPM  
Alvin Edwards, MDiv, PhD  
David Giammittorio, MD  
Jane Hickey, JD  
Maxine Lee, MD  
Stuart Mackler, MD  
Wayne Reynolds, DO  
David Taminger, MD  
Svinder Toor, MD  
Ray Tuck, DC

**MEMBERS ABSENT:** Lori Conklin, MD  
The Honorable Jasmine Gore  
Deborah DeMoss Fonseca

**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  
Lynn Taylor, Discipline Support Specialist  
David Brown, DC, DHP Director  
Elaine Yeatts, DHP Senior Policy Analyst  
Erin Barrett, Assistant Attorney General  
Cynthia Bailey, Deputy Attorney General

**OTHERS PRESENT:** Kirsten Roberts, MSV  
Mike Jurgensen, MSV

**EMERGENCY EGRESS PROCEDURES**

Dr. Allison-Bryan read the emergency egress procedures for Conference Room 2.

## INTRODUCTION OF NEW BOARD MEMBERS

Dr. Walker welcomed the Board's newest member, David Taminger, MD, who greeted all on the Board and said he looks forward to working with them.

Dr. Walker also acknowledged Cynthia Bailey, Deputy Attorney General.

## APPROVAL OF THE OCTOBER 22, 2015 MINUTES

Dr. Mackler moved to accept the minutes of October 22, 2015 with several small corrections. The motion was seconded and carried unanimously.

## ADOPTION OF THE AGENDA

With the addition of a new agenda item, **NBCOT Certification**, and reordering of the agenda to accommodate the Senior Policy Analyst's busy schedule, Dr. O'Connor moved to approve as amended. The motion was seconded and carried unanimously.

## PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

## NEW BUSINESS

## REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of the Board's pending regulations.

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

- Report from the 2016 Session of the General Assembly

Ms. Yeatts reported that Dr. Brown and Ms. Hahn have been at the General Assembly covering 89 bills which may affect DHP and/or its boards. There are 15 bills that originated in DHP or the Secretary's Office.

Of the bills reviewed, the following generated discussion:

**SB 463 Nurse practitioners; licensed as certified nurse midwives, practicing without patient care team.** *Chief patron: Carrico - Summary as introduced:*

**Nurse practitioners; certified nurse midwives; practicing without a patient care team or practice agreement.** Authorizes a nurse practitioner licensed by the Boards of Medicine and Nursing in the category of certified nurse midwife to practice without the requirement for

collaboration and consultation with a patient care team physician as part of a patient care team or a written or electronic practice agreement between the licensed nurse practitioner and a licensed physician. Under current law, such practice is authorized only under a Department of Health pilot program. The bill grants prescriptive authority to such nurse practitioners and directs the Boards of Medicine and Nursing to jointly promulgate regulations governing such practice. Finally, the bill repeals the pilot program authorizing such practice as obsolete.

Dr. Giammittorio stated that changing “*collaboration*” to “*consultation*” loosens the bonds of the collaborative team that currently exists between midwifery and medicine.

### **HB 900 Associate physicians; requirements for licensure, practice agreements.**

*Chief patron: Stolle - Summary as passed House:*

**Licensure and practice of associate physicians.** Authorizes the Board of Medicine to issue a two-year license to practice as an associate physician to an applicant who is 18 years of age or older, is of good moral character, has successfully graduated from an accredited medical school, has successfully completed Step 1 and Step 2 of the United States Medical Licensing Examination, and has not been engaged in a postgraduate medical internship or residency program. The bill requires all associate physicians to practice in accordance with a practice agreement entered into between the associate physician and a physician licensed by the Board and provides for prescriptive authority of associate physicians in accordance with regulations of the Board.

Dr. Ali stated that this bill is troubling. He said that, on one hand, we are holding licensed physicians to a higher standard in regards to prescribing controlled substances, but on the other, we are going to allow an individual who has not completed a residency program to practice and prescribe. He sees this as subverting the entire educational system. The solution to the problem is not to add another avenue for licensure, but to increase the number of residency slots.

Dr. Allison-Bryan advised that the medical schools were contacted about this bill, and it was discovered that the residency matching shortfall does not affect that many individuals. For those that don't match there are obvious reasons, including selecting their residency choices too narrowly.

Dr. Allison-Bryan noted that MSV communicated with its members encouraging them to express their thoughts about this bill. If Board of Medicine members wish to comment, they must do so as **an individual** and **not as a Board member**.

After discussion, Dr. Allison-Bryan moved to oppose the passage of HB 900. The motion was seconded and passed unanimously.

### **SB 671 Lyme disease; treatment of a patient.**

*Chief patron: Black - Summary as introduced:*

**Treatment of a patient for Lyme disease.** Provides that when a patient chooses to accept treatment in accordance with a clinical practice guideline maintained by the National Guideline Clearinghouse, a health care provider will not be subject to health regulatory board investigation

or a hearing based on the election to follow such a clinical practice guideline.

Dr. O'Connor asked if it was appropriate for the Board to express its position on this bill.

Ms. Yeatts advised that there is an official position on the bill from the Governor which is to oppose this bill.

After discussion, Dr. Ali moved to also relay to the Governor that the Board strongly opposes SB 671 legislation as drafted. The motion was seconded and passed unanimously.

- Regulatory Recommendation on Proposed Regulations for Genetic Counselors

Ms. Yeatts referred to the legislation passed by the General Assembly in 2014, the comments received on the NOIRA from June 1, 2015 to July 1, 2015, the minutes of the meetings of the Advisory Board on Genetic Counselors during the development of the proposed regulations, and the proposed regulations as recommended by the Advisory Board.

Ms. Yeatts said that the vast majority of comment received, as well as the discussion by the Advisory Board, was related to §54.1-2957.20 – Conscience Clause:

“Nothing in this chapter shall be construed to require any genetic counselor to participate in counseling that conflicts with their deeply-held moral or religious beliefs, nor shall licensing of any genetic counselor be contingent upon participation in such counseling. Refusal to participate in counseling that conflicts with the counselor's deeply-held moral or religious beliefs shall not form the basis for any claim of damages or for any disciplinary or recriminatory action against the genetic counselor, provided the genetic counselor informs the patient that he will not participate in such counseling and offers to direct the patient to the online directory of licensed genetic counselors maintained by the Board.”

Ms. Yeatts advised that the conscience clause is a matter of law, and that the Board has no discretion in the exercise of it. The Advisory Board chose to develop regulations such that a patient will be adequately informed and protected should the genetic counselor exercise his/her right to refuse to perform services.

Dr. Harp remarked that the genetic counselors on the Advisory Board stated that they thought no genetic counselor in Virginia would exercise the conscience clause. These regulations will ensure that the Board and Advisory Board have met their regulatory requirement and, in the process, will also meet the mission of protecting the public.

After a brief discussion, Dr. Mackler moved to accept the proposed regulations as presented. The motion was seconded and carried unanimously.

- Final regulations for Office-Based Anesthesia

Ms. Yeatts provided a brief history of the amendments to 18VAC85-20-320. She pointed out that only two comments have been received – one from Mike Jurgensen speaking on behalf of the Medical Society of Virginia, and the other from Kaiser Permanente.

After a brief discussion, Dr. Mackler moved to accept the final regulations as presented. The motion was seconded and carried unanimously.

- Adoption of Proposed Amendment to Increase the Hours of Continuing Education for Behavioral Analysts and Assistant Behavioral Analysts

Ms. Yeatts reviewed the comment received on the NOIRA and the proposed amendments to the regulation. She also noted that the Advisory Board on Behavior Analysis recommends that the number of continuing education hours for assistant behavior analysts be increased from 16 to 20 per biennium. These increases are being recommended because the Advisory Board felt that consistency between the CE requirements for professional certification and licensure would encourage licensees to maintain certification with the Behavior Analyst Certification Board.

Dr. O'Connor moved to adopt the proposed amendments recommended by the Advisory Board on Behavior Analysis. The motion was seconded and carried unanimously.

- Adoption of Fast-Track Amendment for Radiologic Technologists

Ms. Yeatts said that the Advisory Board on Radiologic Technology recommends amending the regulations to achieve consistency with the current processes of the American Registry of Radiologic Technologists and the Nuclear Medicine Technology Certification Board. Both of these certifying bodies issue a certification to individuals that have passed their respective examinations rather than providing a score.

Additionally, the Advisory Board recommends that the regulations be amended to clarify that a radiologic technologist must practice "consistent with his education and certifying examination".

Dr. Edwards moved to adopt the proposed amended language as recommended by the Advisory Board as a fast-track action. The motion was seconded and carried unanimously.

- National Board for Certification in Occupational Therapy Maintenance of Certification as an Option for Continuing Education

Dr. Allison-Bryan moved to accept the proposed amendments as presented. The motion was seconded and carried unanimously.

Dr. Walker called for a 15-minute break; the meeting reconvened at 10:16 a.m.

## **REPORT OF OFFICERS AND EXECUTIVE DIRECTOR**

### **PRESIDENT'S REPORT**

Dr. Walker had no report, but extended congratulations to Dr. Allison-Bryan who had been appointed to the Board of Health Professions (BHP).

## **VICE-PRESIDENT’S REPORT**

Dr. Allison-Bryan gave a brief report on her attendance at her first BHP meeting, noting that the Board reviewed a telemedicine study by two VCU graduate students. She took the opportunity to report to BHP that the utilization of telemedicine was not as narrow as the study implied. In addition, the BHP discussed compact issues. The Healthcare Workforce Data Center continues to analyze information gathered from renewal surveys. It also plans to utilize Tumblr to present information about health care professions to high school students.

## **SECRETARY-TREASURER’S REPORT**

Dr. O’Connor attended the Executive Telehealth Roundtable Summit hosted by C-Tel in November 2015. He said he attended several interesting sessions including how the Texas Board of Medical Examiners has chosen to define quality telemedicine, which may impact services by some of the DTC (Data Driven Direct to Consumer) telehealth companies. He also attended a mock-trial of a telemedicine malpractice claim.

Dr. O’Connor noted that the most interesting is the “uber model” – telemedicine within the university.

The overarching theme was that telemedicine is here to stay, and the delivery technology is rapidly evolving. In telemedicine there are savings, and there is money to be made.

## **EXECUTIVE DIRECTOR’S REPORT**

- Revenue and Expenditures Report

Dr. Harp reported that the Board’s cash balance on December 31, 2015 was \$7.2 million. Legal fees are a major consideration in the derivation of the FY2017-2018 budget.

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

- Health Practitioners Monitoring Program Report

Dr. Harp noted that the Board of Medicine currently has 133 participants in the program, which account for approximately ¼ of all HPMP participants.

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

- FSMB Report of the Nominating Committee

Dr. Harp informed the members that Steve Heretick, JD, past President of the Board of Medicine, was running for Chair-Elect of the Board of Directors of the Federation of State Medical Boards. Stuart Mackler, MD, has been nominated for a seat on the FSMB Nominating Committee.

- Members with Expiring Terms

Dr. Harp encouraged those Board members whose 1<sup>st</sup> term expires June 30, 2016 to be sure to apply for reappointment if they are interested in remaining on the Board.

## **COMMITTEE AND ADVISORY BOARD REPORTS**

- Committee Appointments and Advisory Board Reports

Dr. Walker reminded the Board members that their attendance at meetings of committees to which they have been appointed is crucial to Board operations.

Dr. Mackler moved to accept the minutes en bloc. The motion was seconded and carried unanimously.

## **OTHER REPORTS**

### Assistant Attorney General

For the benefit of the new Board members, Ms. Barrett introduced herself and provided an outline of her role in conjunction with the Board's operations. Ms. Barrett also gave a summary of the status of several Board appeals.

### Board of Health Professions

Dr. Allison-Bryan said there were no further items to report.

### Podiatry Report

Dr. Clements had no report.

### Chiropractic Report

Dr. Tuck had no report.

### Committee of the Joint Boards of Nursing and Medicine

No additional items to report.

## **DHP DIRECTOR'S REPORT**

Dr. Brown provided a brief report on the 2016 Session of the General Assembly and stated that Senator Dunnivant was doing a great job.

## LICENSING REPORT

- Licensing Statistics

Mr. Heaberlin provided updated licensing statistics noting that from July 1, 2015 to February 1, 2016, the Board had issued 3,233 licenses, an increase of 571 from the previous year.

In addition, Mr. Heaberlin reported that from January 14, 2016 to February 1, 2016, 113 MD and DO applications had been approved for licensure. Of those, the average number of days to process them was 85.11 and the median was 73. The actual number of days to licensure ranged from 7 to 345. Only 43 applicants (or 38%) would have been deemed compact-eligible.

These reports were for informational purposes only and did not require any action.

## DISCIPLINE REPORT

Ms. Deschenes commented that Board members should be sure to base their advisory letters on existing law and regulation, being careful not to incorporate their individual opinions in the letters.

## APPOINTMENT OF NOMINATING COMMITTEE

Dr. Walker appointed Dr. Mackler, Dr. Conklin and Dr. Edwards with the Board's approval.

## REMINDERS PAGE

Travel vouchers for today's meeting should be submitted no later than March 18, 2016.

## ANNOUNCEMENTS

The next meeting of the Board is June 16, 2016.

**Adjournment:** With no other business to conduct, the meeting adjourned at 11:16 a.m.

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Kenneth J. Walker, MD  
President, Chair

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William L. Harp, MD  
Executive Director

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Colanthia M. Opher  
Recording Secretary