

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 16, 2016

Department of Health Professions

Henrico, VA

CALL TO ORDER: Dr. Walker called the meeting of the Board to order at 8:36 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
Deborah DeMoss Fonseca
Alvin Edwards, MDiv, PhD
David Giammittorio, MD
The Honorable Jasmine Gore
Jane Hickey, JD
Isaac Koziol, MD
Maxine Lee, MD
Stuart Mackler, MD
Wayne Reynolds, DO
David Taminger, MD
Svinder Toor, MD
Ray Tuck, DC

MEMBERS ABSENT: Lori Conklin, MD

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
Sherry Gibson, Administrative Assistant
David Brown, DC, DHP Director
Lisa Hahn, MPA, DHP, Deputy Executive Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Tyler Cox, JD, MSV
Jerry Canaan, JD, HDJN

EMERGENCY EGRESS PROCEDURES

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

INTRODUCTION OF NEW BOARD MEMBERS

Dr. Walker welcomed the Board's newest member, Isaac "Ike" Koziol, MD, who gave a brief overview of his career. The Board and staff warmly welcomed him.

APPROVAL OF THE FEBRUARY 18, 2016 MINUTES

Dr. Edwards moved to accept the minutes of February 18, 2016 as written. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

Ms. Yeatts requested that the agenda be amended to include review of proposed draft legislation recommended by the Board of Pharmacy. Dr. Mackler moved to accept the amended agenda. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

DHP DIRECTOR'S REPORT

Dr. Brown reported on the success of DHP's Employee Training Day held in May. He said that the goal of the trainings is to enhance the productivity of the agency's workforce. He outlined the training which included sessions on how to deal with difficult customers, workplace and out-of-workplace interactions, fraud protection, etc. Dr. Brown said that he led the "Conversations with Board Executives" session, and it was very well-received. He shared some of the survey comments from attendees and noted that the training rated 4.4 on a scale of 1 to 5. He said that plans for the fall training are already underway, as is the production of a few training videos.

Dr. Brown then provided an overview of the 2016 Legislative Session for DHP. He noted that several items from the General Assembly directly affect the physician community. They are:

1. the mandatory check of the PMP by all practitioners that prescribe opioids for more than 14 days.
2. the requirement for dispensers to report to the PMP within 24 hours rather than one week.
3. the requirement for the Board of Medicine to collaborate with the PMP and the Board of Pharmacy to develop criteria to identify unusual prescribing patterns that should be reported to the Enforcement Division for investigation. He noted that this collaboration will take the form of

an advisory group to the PMP.

4. the requirement for the Board, in coordination with the PMP, to establish thresholds that will be used to identify practitioners who will need to obtain continuing education hours in controlled substance prescribing. These expectations should be in place before January 2017.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Walker reported on his attendance at FSMB's Annual Meeting held in April. He congratulated Dr. Mackler on his appointment to FSMB's Nominating Committee and spoke briefly about the FSMB compounding position statement that was referred back to the Board of Directors for reconsideration. He also described an informative break-out session on the effective use of social media by physicians.

VICE-PRESIDENT'S REPORT

Dr. Allison-Bryan also reported on her first FSMB Annual Meeting. She said that being there reminded her that we do not live in a vacuum and that Virginia does things very well. She also reported that she has volunteered to serve as faculty at next year's Annual Meeting and will help lead the new attendee orientation.

Dr. Allison-Bryan then provided a synopsis of BHP's meeting minutes, mentioning the telemedicine report that was co-authored by two VCU graduate students who interned at DHP. She said there was a lot of discussion by BHP about the content of the report. After the discussion, BHP decided that it would attach a cover letter to the report. Dr. Brown agreed that the cover letter would help readers understand the report. Dr. Allison-Bryan applauded the work done by Dr. O'Connor and the Ad Hoc Committee on Telemedicine, noting its accuracy and value as a resource document.

Dr. Allison-Bryan further mentioned that the BHP minutes included a draft study plan regarding doctors of chiropractic and the performance of CDL physicals. Legislation had been introduced to add CDL physicals to the chiropractic scope of practice, and BHP has been requested to determine if chiropractors do or do not have the requisite education and training as set forth in federal regulations governing CDL physicals. The draft study plan anticipates that appropriate recommendations will be made based upon data, a public hearing will be held, and after final review of all comment, a report will be submitted to Delegate Orrock by November 1, 2016. Dr. Allison-Bryan stated that Virginia was one of only four states that do not allow chiropractors to perform these physicals and that the chiropractic scope of practice crafted in 1944 may be outdated.

Ms. Barrett advised that the authority to perform CDL physicals is driven by statutory definition and that legislative changes have been submitted and rejected for several years.

Dr. Reynolds asked how other states were able to obtain approval from the federal government to

allow chiropractors to perform these physicals. Ms. Barrett advised that performing CDL physicals would need to be facilitated by statute and the board that regulates chiropractic in those states.

Dr. Tuck advised that he has not been interested in performing CDL physicals, but from his understanding, the CDL exam had been performed by chiropractors for decades until the transition to federal oversight.

Dr. Walker thanked Dr. Allison-Bryan for her report and suggested that discussion be tabled while BHP proceeds with its work.

SECRETARY-TREASURER'S REPORT

Dr. O'Connor did not have a report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reported that the Board's cash balance as of March 31, 2016 was \$8.77 million. He thanked Dr. Brown for being a great supporter of Board member attendance at the FSMB Annual Meeting and allowing Board staff overtime.

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

- Health Practitioners' Monitoring Program Report

Dr. Harp noted that Medicine currently has 112 participants in the program.

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

- HB962-Lyme Disease

Dr. Harp advised that Dr. Brown and Elaine Yeatts put forth a lot of effort on this bill whose focus was on physicians informing their patients tested for Lyme disease about the testing process/results. The bill sought to impose a reprimand for those not following the procedure already outlined in the law. The bill did not pass, but an agreement led to the Board being charged with reminding all of its licensees of the requirement to provide the statutory language to patients that undergo testing.

Dr. Harp then referred to correspondence from Marcus Rice, MD asking the Board to formally denounce this requirement.

Dr. Brown commented that direct imposition of a penalty for not performing a requirement is new territory for the Board of Medicine. He said that every effort was made to convey that an alternative should be explored. There was intense pressure from patrons in Northern Virginia

where it is thought that Lyme disease is not being properly diagnosed. Dr. Brown said that stakeholders/patrons would be meeting to develop a strategy and come up with some solutions, and expects to see this issue back before the General Assembly next year.

Dr. Harp informed the Board that a reminder of the need to comply with the law was placed in the April 2016 Board Briefs.

- Fatal Drug Overdoses 2007-2015

Dr. Harp reviewed the 8-year report stating that the good news is, with the educational efforts of the Board, PMP, MSV, and the Department of Health, prescription opioid deaths are lower than they have been in past years. Unfortunately, the deaths from heroin and fentanyl have gone up. For years, the deaths from all opioids were about 500, and now they are over 750.

Dr. Harp advised that the Governor's Task Force on Prescription Drug and Heroin Abuse recommended that the Board of Medicine put together a workgroup to review the standards of care for the use of buprenorphine and make recommendations to the Board of Medicine for consideration of regulations. He said a Buprenorphine Work Group has been formed and initially met on May 13th. At that meeting, it elected to develop a guidance document based on FSMB's Model Policy on DATA 2000 and Treatment of Opioid Addiction in the Medical Office. Another meeting is anticipated for late July/August.

- AMA Letter on International Medical Graduate Licensure Parity

Dr. Harp referred to a letter from June-Anne Gold, MD, Chair of the American Medical Association International Medical Graduates Governing Council and advised that Dr. Gold is asking the Board to consider licensure parity between domestic and international graduates. He also mentioned that Dr. Bhushan Pandya, President-Elect of the Medical Society of Virginia, had been in contact with Board staff regarding parity and referred to Dr. Pandya's Virginia overview in the packet.

This item was for informational purposes only and did not require any action, but would be discussed on future agendas of the Executive, Legislative and Credentials Committee meetings.

- Letters re: FSMB Statement on Physician Compounding

Dr. Harp informed the members that after FSMB published a draft position statement on Compounding of Medications by Physicians, the Board was contacted by several organizations (pages 33-54) asking the Board of Medicine to oppose the position statement as written. The requests from these organizations were relayed to the Board's voting delegate prior to the FSMB Annual Meeting. Dr. Harp noted that no action was needed at this time, because the FSMB has decided to reconsider its position statement. The Board's current MDR regulations will continue to govern "compounding" in physicians' practices.

- Letter re: USP 797 and Allergy Immunotherapy

Dr. Harp spoke to an e-mail received from Dana McBride, MD, President, Asthma and Allergy Society of Virginia, on the proposed compounding changes to USP 797. He expressed concern that the proposed revisions would prohibit the method of mixing/using allergens that has been in place for years and proven to be safe. He requests that, as the appointed guardians of the public's medical well-being, the Board of Medicine provide comment to USP. Dr. McBride also reported that his Congressional Representative is willing to make sure that the Board's comment, albeit late, would be taken into account. Dr. Harp said that over the years the Board has declined to make comment regarding specific issues of the practice of medicine that are better carried by specialty societies.

Dr. Ali said that this issue has been repeatedly debated by the Ad Hoc Committee on MDR, and it was decided that, in the interest of patient care, no changes should be made to the current Virginia regulations. In addition, USP is a private organization that sets standards for pharmacy practice and boards of pharmacy, and it is not appropriate for our Board to dictate how USP should conduct its business.

Dr. Harp will relay to Dr. McBride the Board's stance to not make comment to USP on this issue that is of importance to the allergists and immunologists.

- Consumer Reports Ranking of Board of Medicine Websites

Dr. Harp announced that Virginia ranked #6 in the nation for the most user-friendly and transparent online websites. Dr. Harp recalled that New York, which ranked 2nd and North Carolina which ranked 5th both consulted with Virginia during the development of their physician profile systems.

This report for was informational purposes only.

- PGY-4 Board of Medicine Elective

Dr. Harp informed the Board that for several years, 4th year psychiatry residents from VCU have rotated for 8-10 weeks through the Board of Medicine and DHP to learn about health regulation. Staff has enjoyed teaching the residents, and Dr. Harp thanked everyone who has assisted with the success of this elective.

This report for was informational purposes only.

- Board Members with Terms Expiring June 30, 2016

Dr. Harp recognized those members with terms expiring June 30th, noting those eligible for reappointment and those that are not. Dr. Harp stated that Dr. Mackler and Dr. Reynolds, who are completing their second terms, have been a great asset to the Board and will be missed.

- Food and Drug Administration (FDA) Meeting

Dr. Harp advised that the Office of Professional Affairs in the Center for Drug Evaluation and Research at the FDA has requested to meet with the Board. The Office would like to begin dialogue with stakeholder professions and regulatory boards. Dr. Harp said that a meeting has been scheduled for August 31st to hear what the FDA been doing and to share any concerns the Board may have.

- Key Performance Measures

Dr. Harp reported that for the third quarter of FY2016, the clearance rate for discipline cases was 100%, the pending caseload older than 250 business days was 20%, and the percent of cases closed within 250 business days was 94%. Dr. Harp noted that cases older than 250 days were most likely due to continuances and/or expert review. He thanked Dr. Matusiak and the Board members for their work; the numbers reflect their diligent efforts.

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

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

OTHER REPORTS

Assistant Attorney General

Ms. Barrett also provided an update on the status of several Board appeals.

Following the update, at 9:55 a.m., Dr. O'Connor moved to convene a closed session pursuant to section 2.2-3711(A)(7) of the Code of Virginia for the purpose of consultation with and provision of legal advice by the AAG in the matters of Petrie, Clowdis, Zackrison, and Hagmann. Additionally, he moved that William Harp, MD, Erin Barrett, AAG, and Jennifer Deschenes, JD attend the closed meeting as their presence would aid the Board in its deliberations. The motion was seconded and carried.

Upon motion made, seconded and carried, the Board returned to open session at 10:35 a.m. following the procedure for certification of an executive meeting pursuant to Virginia Code Section 2.2-3712.

Board of Health Professions

See synopsis under the Vice-President's report.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck provided a brief account of his attendance at the Federation of Chiropractic Licensing Boards' Annual Meeting. He said that FCLB and the chiropractic profession are watching and discussing the issues of social media, opioid statistics, and policies at the national level.

Committee of the Joint Boards of Nursing and Medicine

Dr. Mackler reported that the Nurse Compact is gaining momentum at the national level and that he has been appointed to the Advisory Board for the Joint Boards, which will allow him to continue his service at DHP.

NEW BUSINESS

HEALTHCARE WORKFORCE DATA CENTER (HWDC) REPORT ON PHYSICIAN ASSISTANTS

Dr. Elizabeth Carter provided an informative presentation on the current workforce report for physician assistants, noting the differences from the one accomplished in 2015. She said that the HWDC has collaborated with the Virginia Latitude Group in its efforts to become more policy-relevant. She also noted that the HWDC is working with Commissioner Levine of the Department of Health on a model from the supply side with health opportunity index variables.

REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

Ms. Yeatts reported that Secretary Hazel has personally been reviewing the regulations submitted by DHP for approval. The last 3 sets are currently awaiting the Governor's signature, including the office-based anesthesia regulations for which the public comment period ends July 27, 2016.

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

- Response to Petition for Rulemaking

Ms. Yeatts reviewed the Petition for Rulemaking from Mitchell Gray in which he asks the Board to amend §54.1-2915 Unprofessional Conduct, to include a requirement that physicians performing genital exams wear latex or equivalent gloves.

After discussion, Dr. Ali moved to deny the request. The motion was seconded and carried unanimously. The consensus was that regulations should not be created for commonplace standard of care practices. Staff will relay the Board's decision to Mr. Gray.

- Board action on Public Participation Guidelines (PPG)

Ms. Yeatts advised that the Code of Virginia currently provides the public the opportunity to comment on proposed regulations. The Board of Medicine's regulations should be identical to the Administrative Process Act, and the proposed change is being added for consistency. The regulations will read as follows:

18VAC85-11-50. Public Comment.

Part III. Public Participation Procedures

A. In considering any nonemergency, nonexempt regulatory action, the agency shall afford interested persons an opportunity to (i) submit data, views, and arguments, either orally or in writing, to the agency; and (ii) be accompanied by and represented by counsel or other representative. Such opportunity to comment shall include an online public comment forum on the Town Hall.

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

- Board of Pharmacy – Proposed Legislation on Participation in Collaborative Agreements

Ms. Yeatts announced that draft legislation is being prepared for the 2017 Session of the General Assembly. The legislation, which will require the Boards of Medicine and Pharmacy to revise their regulations, amends the statute to say “Collaborative agreements may include the implementation, modification, continuation, or discontinuation of drug therapy pursuant to written or electronic protocols, provided implementation of drug therapy occurs following diagnosis by the prescriber; the ordering of laboratory tests; or other patient care management measures related to monitoring or improving the outcomes of drug or device therapy.”

AND

Notwithstanding, the provisions of §54.1-3303, a pharmacist may issue a prescription to implement, modify, continue, or discontinue drug therapy pursuant to written or electronic protocols within a collaborative practice agreement.

This item was for discussion only and did not require any action at this time.

INTERSTATE MEDICAL LICENSURE COMPACT

Dr. Allison-Bryan reported on the Legislative Committee's recommendation not to participate in the Interstate Medical Licensure Compact in its current form. Dr. Allison-Bryan stated that the purpose of the Compact was three-fold: 1) promote access to underserved states, 2) avoid duplication of the licensing work by boards, and 3) preempt a need for the federal government to

issue a national license. She advised there were several factors discussed at length that were not consistent with the Board's current operations, including language that conflicts with Virginia laws and regulations. Dr. Allison-Bryan noted that an alternative for streamlining Virginia's licensing process is offered by §54.1-103, which lays the ground work for reciprocity with other states.

Ms. Hickey stated her surprise with the Legislative Committee's recommendation and suggested that, even though the Compact may not be ready for prime time, the decision to accept or deny be delayed until more study can be done.

Dr. Ali advised that the discussion by the Legislative Committee was very focused and deliberate and during the discussion of the Compact document, it was determined that there was no immediate need to join, and that access to health care for Virginians would not be enhanced by joining the Compact.

Ms. Barrett pointed out that the way the Compact is currently structured, practitioners would still need to obtain a license in every state in which they intend to practice.

Ms. Yeatts said that in addition to reciprocity, license by endorsement is another way to streamline the application process. Licensure by endorsement, allowing the Board to accept a practitioner that holds a full license in another state and meets certain requirements (i.e. education, national examination, etc.), may be a better option than reciprocity, which would require an agreement between states.

Dr. Mackler moved to accept the recommendation of the Legislative Committee as presented. The motion was seconded and carried unanimously.

Drs. Ali, Tuck, Koziol and Ms. Hickey all volunteered to serve on a work group to look at the current licensing process, the ways it can be streamlined, and how access to health care can be enhanced.

Dr. O'Connor moved that a letter be sent to the Federation and the Commissioner of the Compact outlining the concerns discussed by the Board, and seek guidance on how to resolve them. The motion was seconded and carried unanimously. Dr. Harp will author the letters for the President's signature.

APPOINTMENTS TO COMMITTEES, WORKGROUPS, ETC.

HB657 –requires an advisory panel to develop indicators for unusual patterns of prescribing or dispensing controlled substances, as well as misuse by recipients, for the purpose of alerting DHP Enforcement and/or the Virginia State Police of potential violations – **Drs. Conklin and Taminger**

HB829 – requires the Board in coordination with the PMP to develop thresholds for the identification of prescribers that must obtain CME on the prescribing of controlled substances. The suggestion from the Board members was that this issue be addressed by the Board members volunteering for the work group being formed for HB657— **Drs. Conklin and Taminger** will

be asked to help with this HB829.

HB957 – would have required the Board of Medicine to establish the profession of laser hair technician, but the bill was carried over with the suggestion that the Board of Medicine/DHP and the Board for Barbers and Cosmetology/DPOR enter discussion about this potential profession. Ms. Yeatts said it is intended that DHP staff meet with the Department of Professional and Occupational Regulation, so no Board member involvement is anticipated.

SB701 – requires a Regulatory Advisory Panel to develop regulations for the growing and processing of marijuana to produce and dispense cannibidiol oil and THC-A oil for the treatment of intractable epilepsy -- **Drs. Toor and Harp**

LICENSING REPORT

- Licensing Statistics

Mr. Heaberlin provided an update on the licensing statistics.

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

DISCIPLINE REPORT

Ms. Deschenes provided an update on the disciplinary case statistics, noting that the Board is processing cases in a timely manner.

APPROVAL OF 2017 MEETING CALENDAR

Dr. Harp advised that care was taken to avoid the Medical Society of Virginia Annual Meeting.

Dr. Mackler moved to accept the calendar as presented. The motion was seconded and carried unanimously.

SERVICE AWARDS PRESENTATION

Dr. Walker presented plaques in recognition for their service to the Board to:

Syed Ali, MD
Barbara Allison-Bryan, MD
Siobhan Dunnivant, MD (resigned November 2015 to join the Virginia Senate)
David Giammittorio, MD
Stuart Mackler, MD
Kevin O'Connor, MD
Wayne Reynolds, DO

As Past President, Dr. Reynolds presented Dr. Walker with his plaque.

Dr. Mackler then spoke to say that it had been his honor to serve on the Board of Medicine. To show his appreciation to Board staff, and especially Dr. Harp for the education and friendship for

the past 8 years, he presented Board staff with an Oath of Hippocrates plaque for the Board office. In accepting the plaque, Dr. Harp said, “This is a great honor for the staff” and that Dr. Mackler had been one of the most available members of the Board.

REPORT OF NOMINATING COMMITTEE

Dr. Mackler, Chair of the Nominating Committee, presented the slate of officers:

Barbara Allison-Bryan, MD – President
Kevin O’Connor, MD – Vice-President
Ray Tuck, DC – Secretary/Treasurer.

Ms. Fonseca requested the Board consider amending the bylaws to hold the election of officers in October as opposed to June. After some discussion, Dr. Mackler called the question on the proposed slate.

With no other nominations from the floor, Dr. Reynolds moved to accept the slate as presented. The motion was seconded and carried unanimously.

REMINDERS PAGE

Travel vouchers for this meeting should be submitted no later than July 18, 2016.

ANNOUNCEMENTS

The next meeting of the Board will be October 20, 2016.

Adjournment: With no other business to conduct, the meeting adjourned at 12:14 p.m.

Kenneth J. Walker, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary