

---FINAL APPROVED---

VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES

Thursday, October 29, 2009

Department of Health Professions

Richmond, VA

CALL TO ORDER: The meeting convened at 8:46 a.m.

MEMBERS PRESENT: Jane Piness, MD, President
Karen Ransone, MD, Vice-President
Valerie Hoffman, DC, Secretary/Treasurer
Gen. Clara Adams-Ender, RN, MSN, USA Ret.
Deeni Bassam, MD
Sandra Anderson Bell, MD
Malcolm Cothran, MD
Claudette Dalton, MD
William Epstein, MD
Jennifer Lee, MD
Stuart Mackler, MD
Roderick Mathews, JD
Juan Montero, MD
Wayne Reynolds, DO

MEMBERS ABSENT: Ann T. Burks, JD
Stephen Heretick, JD
Gopinath Jadhav, MD
Ellen Shapiro, DPM

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Ola Powers, Deputy Executive Director, Licensing
Colanithia Morton Opher, Operations Manager
Amy Marschean, Assistant Attorney General
Sandra Ryals, Director, Department of Health Professions
Diane Powers, Director, DHP Communications Director
Elaine Yeatts, DHP Senior Policy Analyst

OTHERS PRESENT: Scott Johnson, Medical Society of Virginia
Michael Jurgensen, Medical Society of Virginia
Cal Whitehead, VA Society of Eye Physicians and Surgeons
Karah Jones, Medical Society of Virginia
Ashley Reed, DHP
Renee Watson, DHP
Nicky Pozier, Virginia Oncology Association
Maureen McGrath, Virginia Oncology Association
John Garrett Kemper, Kemper Consulting, Inc.
Vickie Nash, DHP
Nidhi Mehta, DHP

ROLL CALL

Emergency Egress Procedures

Dr. Ransone provided verbal emergency egress instructions.

Introduction of New Board Member

Dr. Piness introduced the Board's newly appointed member, Deeni Bassam, MD. Dr. Bassam addressed the Board and gave a brief overview of his education and medical background. Dr. Bassam stated that he was pleased to be part of the Board and to make a contribution to the medical profession.

The Board gave him a warm welcome.

Approval of the June 25, 2009 Minutes

Dr. Mackler moved to accept the minutes of June 25, 2009 as presented. The motion was seconded and carried unanimously.

Adoption of Agenda

Dr. Hoffman moved to adopt the agenda as presented. The motion was seconded unanimously.

Introduction of Guests

Dr. Piness invited the visitors to introduce themselves to the Board. She acknowledged all of the guests in attendance, including board staff and thanked them for being there. Dr. Harp introduced Jacqueline Watson, DO, Executive Director, District of Columbia Board of Medicine and advised the Board that she would be here for two days to observe the Board's business meeting and its disciplinary proceedings.

Public Comment on Agenda Items

Ms. McGrath, representing the Virginia Oncology Association, spoke in opposition to the proposed change to 18VAC85-20-400 regarding the definition of immediate use, stating that shortening the timeframe from mixing to administration would result in wastage of medication and would most likely be cost-prohibitive.

Mr. Kemper, representing US Oncology, provided the Board with legislative background information on 18VAC85-20-400, and spoke in opposition to the proposed change in the definition of immediate use.

Mike Jurgensen, representing the Medical Society of Virginia, referred to correspondence submitted to the Board from Daniel Carey, MD, President of the Society, acknowledging their position of non-support for the proposed change in 18VAC85-20-400. Dr. Carey's letter noted that the proposed change would not only adversely impact the ability of many physicians to provide the best care to their patients, but also would have a notable fiscal impact on physician practices and patient care costs.

Cal Whitehead, representing the Virginia Society of Eye Physicians & Surgeons (VSEPS), called the Board's attention to correspondence submitted by Kenneth Karlin, MD, President of VSEPS, recommending that the Board decline the proposed change to 18VAC85-20-400. Dr. Karlin's letter stated that the proposed change does not address a threat to quality care, and would result in undue regulatory burden as well as a fiscal impact on physician practices.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Sandra Ryals, Director, Department of Health Professions, addressed the Board on the following matters:

- **New Communications Specialist**

Ms. Ryals introduced Diane Powers, the newest member of the DHP team and Director of Communications for DHP. Ms. Ryals stated that Ms. Powers was a seasoned reporter and critical thinker, most recently employed with the Williamsburg Community Health Foundation following her time as communications director with the Virginia Department of Health. Ms. Ryals also mentioned that Ms. Powers managed risk communications during a hurricane, an earthquake, blood shortages, and a war while employed at the American Red Cross National Headquarters. Ms. Powers indicated to the Board members that she was pleased to be at DHP and looked forward to assisting the Board of Medicine when called.

- **Healthcare Workforce Data Center**

Ms. Ryals advised that the most recent presentations of data from the Center's consultants were well-received by the workforce committee members. Ms. Ryals noted that the focus is still on addressing practitioner shortages by collecting the best data possible. Ms. Ryals advised that almost everything was in place to publish an analysis of the Center's initial survey information on the DHP website. She indicated that it has been ten years since online renewal became available. By the end of the year, the ability to apply for initial licensure online should be in place, along with an initial applicant survey.

- **Cash Transfer**

Ms. Ryals informed the Board that the Department would experience a cash transfer to assist with the short-fall in the general fund. Ms. Ryals stated that \$666,360 will be

transferred from DHP this fiscal year. She said that several different equations are being considered to determine each Board's share based on number of licensees, full-time personnel, revenues, and administrative cost. Given that the Board of Medicine will be contributing to the cash transfer, the recommendation that the Board reduce its fees is being withdrawn.

Charles Giles, DHP Budget Manager, also addressed the Board and provided some background financial benchmark information.

Dr. Ransone expressed her concern about the budget and impending cash transfer and stated that it represents another tax on the licensee. Dr. Ransone suggested that the Board members express their discontent with this transfer by contacting their legislators. Dr. Dalton noted that with the push for 250-day case closure, the removal of per diem, the deduction of certain meals from M&IE, and the request for additional work from board staff and members, it seems short-sighted to take money that physicians pay for their licenses and demand more time and effort.

Ms. Ryals expressed her support for all the comments voiced and spoke to the steps being taken to reduce costs.

- **Virginia Performs**

Ms. Ryals stated that the Board of Medicine and Department of Health Professions continue to do well by meeting and exceeding the 250-day case closure target of 90%. Ms. Ryals provided information showing that for FY2009Q4, Medicine's clearance rate was 128%, the pending caseload older than 250 days was 12%, and the percent closed within 250 business days was 95%.

Ms. Ryals shared that in the first quarter of FY2010, the Board of Medicine met and exceeded the 90% closure target within 250 days, with the agency as a whole at 95%. Ms. Ryals remarked that for three consecutive quarters, Medicine has met and exceeded the set goals. She offered her congratulations on the accomplishment and acknowledged the efforts of all involved.

Ms. Ryals mentioned that customer satisfaction continues to be good and licensure within 30 days continues to do well. She advised that work is still to be done with Neal Kauder to post not only the most recent quarterly case closure information, but corresponding licensure data as well.

Ms. Ryals advised the Prescription Monitoring Program is online 24-7 and working well. She also advised that the agency is receiving unsolicited comments about PMP's improved capabilities.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

OFFICER'S REPORT

Dr. Piness - President, reported that she attended the Medical Society of Virginia Board of Directors' meeting in September at which the predominant topic was national health care reform.

Dr. Ransone - Vice-President, advised that she attended the Medical Society of Virginia's Annual Meeting at which the current model of medical oversight for nurse practitioners was supported. She also reported that the licensure of naturopaths may not be supported by the Medical Society.

Dr. Hoffman - Secretary/Treasurer – No report.

EXECUTIVE DIRECTOR'S REPORT

- **Revenue and Expenditures**

Dr. Harp advised that there had been an anomaly with the revenue projections for the biennium, with approximately \$800,000 fewer dollars being received than expected. However, the Board was well within its projected expenditures, resulting in a net surplus of \$300,000 for FY2009.

- **Health Practitioners Monitoring Program Statistics**

This report was provided for information only. No action required.

- **Board Briefs**

Dr. Harp informed the Board that an e-mail notification with a link to the Board Briefs was sent in late September to approximately 25,000 licensees, those that had provided an e - mail address during the online licensing process. There are now over 53,000 licensees of the Board.

Dr. Ransone acknowledged receipt of the e-mail notification but stated that it was unfair to post the Board Briefs on the website and expect those licensees that were not notified to find it. Dr. Ransone then moved to have the first 9 pages of the Board Briefs published and mailed to every licensee with language that encourages them to provide an e-mail address for future newsletters. The motion was seconded and carried unanimously. It was also suggested that those licensees renewing online in 2010-2011 be strongly encouraged during the renewal process to provide an e-mail address.

- **Practitioner Information System**

Dr. Harp stated that the call center has seen an uptick in licensees updating their profile information, which might be a consequence of the electronic Board Briefs.

- Correspondence to Howard Lazar, DPM
- Correspondence to Simon Mest, DPM
- Correspondence to Leah Bush, MD, Chief Medical Examiner
- Correspondence to Maj. Ralph Brubaker

Dr. Harp referred to the correspondence discussed at the Executive Committee. Copies of each were included in the agenda package.

- **Ad Hoc Committee on Office-Based Surgery**

Dr. Harp reminded all that in June the Board had approved a request for an ad hoc committee be formed to review information regarding office-based surgery and whether a need to further regulate such procedures existed. A proposed list of stakeholder organizations was presented. Dr. Harp informed the Board that Dr. Mackler had graciously agreed to chair the ad hoc committee.

- **Ad Hoc Committee on Competency**

Dr. Harp informed the Board that the proposed recommendation of the Ad Hoc on Competency would not be submitted by DHP in the 2010 legislative packet because it could not be considered minor statutory revision of a housekeeping nature.

Dr. Dalton advised that there was some disappointment about that decision and especially since states now have standards lower than local hospitals. Dr. Dalton gave a brief outline of where the FSMB is on maintenance of licensure (MOL) and stated that the committee is searching for ways to allow the physician to use current activities to satisfy requirements for MOL. As for the physician that is not board certified, a list of activities is being developed to which a practitioner might attest to demonstrate their continuing competency. Dr. Dalton remarked that both avenues would satisfy the MOL requirement with minimal burden on the physician.

Dr. Harp thanked Dr. Dalton for her invaluable work on the Ad Hoc as well the Credentials Committee.

- **Midwifery**

Dr. Harp advised the Board that authorization had been received to proceed with the publication of the NOIRA regarding disclosure for options for consultation and referral and information on certain high-risk pregnancies as required by HB2163. The workgroup will be meeting December 4th to begin developing draft regulations for presentation to the Advisory Board on Midwifery in February 2010.

- **Polysomnography**

Dr. Harp provided a brief summary and the current status of this study done by the Board of Health Professions. He stated that the recommendation of the Advisory Board on Respiratory Care is that the profession of polysomnography be regulated. Consideration continues as to whether it will be best to create an independent advisory board to the Board of Medicine or to incorporate polysomnographers into the current Advisory Board on Respiratory Care.

REGULATORY ACTIONS

- **Chart of Regulatory Actions**

Ms. Yeatts provided highlights of the current status of regulations being developed by the Board of Medicine. This was provided for information only. No action was required.

- **Board action on final regulations for licensure of Occupational Therapy Assistants**

Ms. Yeatts advised that the proposed final regulations are a replacement of the emergency regulations currently in effect. She informed the Board that at its October 6, 2009 meeting, the Advisory Board on Occupational Therapy again reviewed the proposed regulations and the public comment received and voted to recommend adoption of the language before the Board. Ms. Yeatts stated that there was some concern about the requirement for an OT to countersign the OTA's records within 10 days. As a result that language was struck and replaced with: The supervising occupational therapist shall countersign such documentation in the patient record at the time of review and evaluation required in subsection B of this section.

After a brief discussion, Dr. Bell moved to adopt final amended regulations for licensure of occupational therapy assistants. The motion was seconded and passed unanimously.

- **Periodic review of Chapter 20: Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic**

Ms. Yeatts stated that the Notice of Intended Regulatory Review with request for comment was posted and sent to interested parties with a closing date of June 10, 2009; no comments were received. Ms. Yeatts informed the Board that most of the changes made were editorial or for the purpose of clarification.

Dr. Mackler moved that the proposed changes, excepting those in Section 18VAC85-20-400, be approved as presented. The motion was seconded and carried unanimously.

- **18VAC85-20-400 – Requirements for immediate-use sterile mixing, diluting or reconstituting**

Dr. Harp gave a historical perspective on the compounding regulations. He addressed the proposed change to the definition of "immediate use" in light of the science and Board experience. Dr. Dalton proposed keeping the current 10-hour definition for immediate use, or at most ratcheting it down to 8 hours, and requiring those drugs in fat emulsions to meet the USP 797 definition of immediate use, e.g., 1 hour. After further discussion, Dr. Hoffman suggested that no action be taken until further additional documentation can be obtained to support any changes. Dr. Montero called for the question. The Board unanimously agreed that the current definition for immediate use, e.g., that administration of the mixed sterile product must begin within 10 hours should remain as is, excepting drugs in fat emulsions for which administration must begin within 1 hour, as per USP 797.

- **FSMB CEO**

Dr. Harp announced that the Federation of State Medical Boards had named Humayun J. Chaudry, DO as its new President and Chief Executive Officer. He also mentioned that Regina Benjamin, MD, immediate past Chair of the FSMB Board of Directors, was recently confirmed by the Senate as the next U.S. Surgeon General.

- **SRPs to FSMB Foundation in July**

Dr. Harp confirmed that Mr. Heretick had provided Virginia's Sanction Reference Points manuals to the Federation of State Medical Boards Foundation in July.

- **Travel Regulations**

Dr. Harp pointed out the updated travel regulations included in the packet and reminded the members of the 30-day requirement for vouchers, loss of per diem and deduction of any meals provided at a lodging facility. Mrs. Opher advised that any vouchers received with either of these charges would automatically be recalculated per the regulations.

Dr. Dalton suggested Board members keep a record of the amount of time spent on Board business and the amount of revenue lost to have such data available to present at a more fiscally appropriate time in support of reinstatement of per diem payments to Board members.

- **Educational Modules**

Dr. Harp advised that this topic would be up for discussion at the Retreat, December 4-5th.

- **MDR Inspections**

Dr. Harp indicated that this topic would be addressed at the Retreat.

- **Visits from Adu Dhabi**

Dr. Harp informed the Board that correspondence had been received from the Health Authority in Adu Dhabi requesting to visit the Board to observe and learn about Virginia's disciplinary process. Their visit will most likely be mid-January 2010.

- **PMP CME in March at UVA**

Dr. Harp advised that the Board of Medicine, together with the Prescription Monitoring Program, would be hosting a symposium on pain management and proper prescribing, Saturday, March 6th, 2010 at UVA School of Medicine. This will be the fifth such conference; it will offer 4 hours of CAT I at no cost.

Mr. Giles addressed the Board regarding the withdrawal of the recommendation to reduce fees. Mr. Giles stated at the time the recommendation was entertained, the Board was in a strong fiscal posture. Accordingly, on May 21, 2009 correspondence was sent to Board members advising that there would be a modest, one-time fee reduction; this was based on the best information available at that time. Since then, additional information has been reviewed and considered which has caused that proposed reduction to be rescinded. Mr.

Giles briefly advised that several factors were taken into consideration including but not limited to a miscalculation of the OTA fee rates (-300,000) and a reduction in projected renewed licenses (-3600). He stated that the decision will maintain the Board in a good cash position, ensuring adequate operating funds. The Board can institute a fee reduction without going through the regulatory process if a reduction is determined to be necessary in the future to gain compliance with statute.

COMMITTEE AND ADVISORY BOARD REPORTS

Dr. Cothran moved to accept the Committee and Advisory Board reports en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Marschean gave an update on two cases currently in the courts, Dr. Ahmed and Dr. Tinoosh.

Board of Health Professions

Dr. Harp mentioned the studies of surgical technicians and polysomnographers done by the Board of Health Professions. He stated that the Board may be asked to provide a home for both of these professions. Dr. Harp also advised that the Board of Health Professions is currently considering the development of an allied health board that may group a number of professions together, including but not limited to those with advisory status to the Board of Medicine.

Podiatry Report

There was no report.

Chiropractic Report

There was no report.

- **Proposed agenda for Board retreat**

Dr. Harp advised that the agenda for the Board Retreat, December 4-5, 2009, is currently being finalized and will be available for distribution soon. Staff will send out an RSVP e-mail to obtain an accurate count of those that will be attending.

- **Discipline Report**

Ms. Deschenes gave a verbal update on the Board of Medicine's case numbers. This report was for informational purposes only and did not require any action. Ms. Deschenes stated that the Board is well ahead of the mandate that by July 2010 cases be closed within 250 days.

Ms. Deschenes identified those board members needed to hear presentations regarding a possible summary suspension and proposed consent order immediately after the business meeting adjourned.

- **Proposed 2010 Board Meeting Dates**

The Board moved to accept the 2010 Board meeting dates conditionally. Staff will provide alternate meeting dates for the April 2, 2010 Executive Committee and the June 17-19, 2010 Full Board.

Announcements

Dr. Harp announced that Emily Wingfield, Deputy Director, DHP will be leaving her post at the agency and moving to the State Corporation Commission as Deputy Clerk. The Board wished her much success in that endeavor.

Next scheduled meeting: February 18, 2010

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

Jane Piness, M.D.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary