

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

Thursday, February 23, 2012

Department of Health Professions

Richmond, VA

CALL TO ORDER: Dr. Dalton called the meeting of the Full Board to order at 8:44 a.m.

ROLL CALL

MEMBERS PRESENT: Claudette Dalton, M.D., President
Valerie Hoffman, D.C., Vice-President
Stuart Mackler, M.D., Secretary-Treasurer
Deeni Bassam, M.D.
Sandra Bell, M.D.
Randy Clements, D.P.M.
Stephen Heretick, J.D.
Robert Hickman, M.D.
Gopinath Jadhav, M.D.
Jane Maddux
Jane Piness, M.D.
Karen Ransone, M.D.
Wayne Reynolds, D.O.
Michael Signer, Ph.D., J.D.

MEMBERS ABSENT: William Epstein, M.D.
Irina Farquhar, Ph.D.

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
Colanthia Morton Opher, Operations Manager
Dianne Reynolds-Cane, MD, DHP Director
Arne Owens, DHP, Chief Deputy Director

OTHERS PRESENT: Mike Jurgensen, MSV
Jerry Canaan, HDJN
Kate Nosbisch, DPOR

EMERGENCY EGRESS PROCEDURES

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

APPROVAL OF THE OCTOBER 20, 2011 MINUTES

Dr. Mackler moved to accept the minutes of October 20, 2011 with the one grammatical change suggested by Dr. Harp. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

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

PUBLIC COMMENT ON AGENDA ITEMS

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

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

In the Director's absence, Dr. Dalton encouraged the Board members to review the newest agency travel regulations before any future travel.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Dalton formally welcomed Dr. Dave to his first Full Board meeting. Dr. Dave thanked the Board and stated that he is looking forward to working with everyone.

Dr. Dalton referred to page 65 of the agenda packet noting the discussion at the December 2, 2011 Executive Committee meeting on the need for a retreat at which strategic planning on such topics as continuing competency, necessary changes to law, regulation and policy, and Board staff support could take place.

Dr. Harp added that with so many members of the Board rotating off in June 2012, it would be wise to draw upon the Board's collective expertise before June. Staff will look at the possibility of April 14th as a possible date for a retreat, or in May if necessary.

VICE-PRESIDENT'S REPORT

There was no report.

SECRETARY-TREASURER'S REPORT

There was no report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reported that the Board is currently operating well within budget. The cash balance as of January 31, 2012 was \$3,980,374. Dr. Harp noted that with this being the renewal year for the big four (MD, DO, DC, DPM) the projected revenue is approximately 7.7 million. Dr. Harp pointed out that most of our expenditures are spread across Data, Administrative Proceedings, Enforcement, the Director's Office and the Office of the Attorney General.

- Board Appointments

Dr. Harp acknowledged the 7 Board members whose terms would be expiring in June 2012. Special acknowledgement was given to Dr. Bell and Mr. Heretick who have been faithfully serving since their terms expired in June 2011.

Dr. Harp noted that the Board of Medicine has not, in recent years, been in the position of needing so many Board members appointed or reappointed. To those that will be leaving, "you will be missed."

- Mixing, Diluting or Reconstituting Inspections

Dr. Harp told the Board that the MDR inspections have begun. After meeting with Enforcement to identify appropriate specialties, it was agreed that the Enforcement Division would conduct 10 inspections per region, totaling 40 inspections statewide with licensees that were chosen at random by DATA. Dr. Harp stated that the Board doesn't expect anyone to lose a license as a result of the inspections.

- Travel Requirements

Dr. Harp provided a quick update on the changes in the State Travel Regulations effective October 1, 2011 and the Department of Health Professions Director's Policy #76-5.6, "Travel Reimbursement Policy", effective February 1, 2012.

- Board Briefs

Dr. Harp informed the Board that 33,194 emails were sent to licensees in November informing them that the Board's newsletter was available online. Tracking by DATA revealed that there were 6960 visits to the website to view or download the document between 11/22/11-12/12/11.

- Key Performance Measures

Dr. Harp said for the second quarter of 2012, the Board of Medicine's clearance rate was 116%; the pending case load older than 250 business days was 17%, and the percent closed within 250 days was 93%. Dr. Harp and the Board acknowledged the great work being done by Dr. Matusiak in getting cases processed in record time.

Mr. Jurgensen confirmed that a link has been placed on the Medical Society's webpage that shows the Board's performance measures.

- Special Recognition

Amy Marschean, former counsel to the Board of Medicine, addressed the Board members and thanked them for allowing her to serve alongside in some of the Board's most memorable cases. Ms. Marschean stated that she is now working as a policy analyst with the Department of Aging where she can meld her legal background with advocacy. Ms. Marschean stated that she will miss everyone at the Board and thanked Mr. Casway for his support over the years.

Mr. Heretick rose and stated that "you don't know a person until you see what their sense of humor is like at 3:00 a.m." Mr. Heretick said that Ms. Marschean always had a pragmatic approach to a very serious business and that she's left some very large shoes to fill. Mr. Heretick presented Ms. Marschean with a plaque commemorating her service with the Board of Medicine. She was given a standing ovation.

Dr. Dalton thanked Ms. Marschean for keeping the Board safe during all the proceedings and appeals, and also thanked Mr. Casway for helping the Board while a replacement is being sought.

- FSMB Visit June 2012

Dr. Harp advised that the Federation of State Medical Boards (FSMB) will be attending the June Board meeting. Rick Whitehouse, JD, Executive Director for the Ohio Board and Lisa Robin, Government Relations, will be providing an update on FSMB's activities with emphasis on the Maintenance of Licensure project.

- National Board of Podiatric Medical Examiners (NBPME) Item

Dr. Clements reported that the American Podiatric Medical Association passed a resolution called Vision 2015 with the goal of narrowing the gap between surgeons and podiatrists. Vision 2015 is also looking at the training of allopathic, osteopathic and podiatric practitioners and comparing the results to identify any deficits that would need to be addressed to take podiatric skills to a higher level. Dr. Clements noted that this pilot is slated to begin in 2013.

- Board Member Opportunity with USMLE

Dr. Harp advised the members that FSMB and the National Board of Medical Examiners (NBME) are hosting a workshop in April that will provide an opportunity to learn more about the USMLE program, especially the approach to writing test items. Dr. Harp said that NBME has offered to cover the cost of the trip for one Virginia Board member. Dr. Mackler, Dr. Dave and Dr. Bassam all volunteered for this task. Dr. Harp will follow up with Dave Johnson, Vice-President of Assessment Services, and advise all when a decision has been made.

- HPMP Statistics

Dr. Harp briefly reviewed the report noting that Medicine's numbers have fallen to 100, the lowest during Dr. Harp's tenure. This report was for information only. No action was required.

- Prescription Monitoring Program Update

Dr. Harp advised that as of February 2012 there were over 9,000 practitioners signed up and using the PMP. PMP legislation this year will allow practitioners to have an unlimited number of licensed delegates that can access the system. New law will also authorize the PMP to release information to federal law enforcement investigating drug diversion in certain circumstances. Also, the PMP will be able to send unsolicited reports to the Virginia State Police on patients that appear to be "doctor shopping". Dr. Harp also mentioned that Virginia, Ohio, Indiana, and Connecticut are currently interoperative with their data. To encourage physicians to sign up with the PMP, Dr. Ransone asked the Board to consider placing a link to the PMP in its online renewal process.

- Enforcement and APD Hours

Dr. Harp noted that the Board of Medicine uses 23% of Enforcement's investigative hours and approximately 44% of APD's hours in respect to case support. Dr. Harp said that these numbers speak to the complexity of Medicine cases and the time it takes to analyze cases and craft Notices and Orders. This report was informational only. No action was required.

- Department of Motor Vehicles Medical Webpage

Dr. Harp referred to the January 18, 2012 email from Jacqueline Branche, Healthcare Compliance Officer at DMV, advising that DMV is still in the process of developing a webpage that will pull together all its medical information pertaining to driving in one place for healthcare providers. The anticipated date of release is late April-early May.

- Perimeter Center Parking

Dr. Harp advised the members that the neighboring buildings will soon be occupied and to be mindful to park in the Perimeter Center parking lot only when coming to the Board.

- Other Announcements

- The FSMB SPEX is being offered free of charge to one Board representative interested in taking it and providing feedback about the improved format.
- U.S. Senators Baucus, Grassley and Hatch have been looking at Public Citizen's report and trying to understand what the boards are doing and why they can't do it better. They may ask HHS to enter the discussion.
- There is momentum for national licensure at the federal level that is originating, in part, from interest in telemedicine. Senator Udall of New Mexico is the chief proponent of this initiative.
- The Board of Health Professions does not currently have a Board of Medicine representative and is awaiting an appointment from the Governor.
- SB 313, which dealt with the licensure of surgical assistants and surgical technologists, was carried over to the 2013 Session.
- Dr. Dalton stated that with the anticipated responsibility of additional professions, how the Board might be restructured is another topic for a retreat agenda.

Committee and Advisory Board Reports

Dr. Reynolds moved to accept the committee reports en bloc. The motion was seconded and carried unanimously.

Other Reports

Assistant Attorney General

Howard Casway, Senior Assistant Attorney General, provided an update on the Board's current court cases. No action was required by the Board.

Ms. Deschenes reminded the members to refer any respondents or unexpected visitors involved in a case to Board staff. Mail that cannot be refused should be sent to the Board.

Board of Health Professions

There was no report.

Podiatry Report

As per Dr. Clements above.

Chiropractic Report

No report.

Regulatory and Legislative Issues

Chart of Regulatory Actions

Ms. Yeatts reviewed the ongoing regulatory activity of the Board of Medicine. She noted that periodic review of the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry and Chiropractic is required to be completed every four years; the Board performed its statutory requirement two years ago and is waiting for Executive Branch approval.

Report of 2012 Session of the General Assembly

Ms. Yeatts presented an updated report on the 2012 Session of the General Assembly highlighting those bills that directly affect the Board of Medicine. Special attention was given to HB1106 which gives the Board of Medicine the authority to license behavior analysts and assistant behavior analysts and requires the Board to promulgate emergency regulations within 280 days.

The Board adjourned for a break at 10:25 a.m. and reconvened at 10:45 a.m.

Applied Behavior Analysts

Eli Newcomb, M.Ed., BCBA and Assistant Director of the Faison School, gave a brief but very informative presentation on Applied Behavior Analysts. Mr. Newcomb provided background information on what behavior analysis is, what a behavior analyst is, in what environments behavior analysts work, which behaviors they treat, etc. Mr. Newcomb's presentation explained how broad the application of behavior analysis is, from treating autism to assisting individuals with drug addiction to improving the workplace in companies/organizations. Mr. Newcomb stated there are approximately 287 ABA's in the Commonwealth with varied educational background is in Psychology, Sociology, Special Education and other Behavioral Sciences.

The Board thanked Mr. Newcomb for his presentation. Dr. Harp pointed out that Mr. Newcomb will be on the Board's Work Group for the Promulgation of Regulations as required by HB 1106.

Special Recognition – Ola Powers

Dr. Warren Koontz, former Executive Director for the Virginia Board of Medicine, presented a historical slide show that included the Board of Medicine move from Portsmouth to Richmond in 1977 with three employees in tow, one of them being Ola Powers. At that time, Ms. Powers served as the licensing assistant and over the years was promoted to Office Manger, and then to Deputy Executive Director for Licensure.

Dr. Koontz and Dr. Harp presented Ms. Powers with flowers and a plaque as an expression of the

Board's gratitude for her dedication to keeping citizens of the Commonwealth safe for the last 35 years.

Dr. Harp said that he always marveled at Ms. Powers' ability to maintain her professional composure while handling irate callers. Dr. Harp stated that Ms. Powers is a great representative of the Board and that this is the end of an era; she will be missed. Several Board members provided anecdotes illustrative of Ms. Powers' knowledge and impact on the day-to-day processes of the Board.

Ms. Powers received a standing ovation from the Board members and the licensing staff that was in attendance for the presentation.

On a side note, Mr. Casway stated that Ms. Powers is the only person in DHP that has been around as long as he has, "but she looks better".

Virginia Options on Phase I of FSMB MOL Pilot Project

The Board reviewed the pilot project options and determined that it would be better able to participate in Pilot Project #2 – State Board License Renewal Process Integration.

After a brief discussion, Dr. Reynolds suggested that the Board defer to Dr. Harp and what he feels can be done most efficiently and cost effectively with minimal disruption to Board staff core duties.

Dr. Mackler moved to give Dr. Harp the authority to convey the Board's interest in participation in Pilot Project #2. The motion was seconded and carried unanimously.

Virginia Academy of Physician Assistants Request for Guidance

Dr. Harp referred to the correspondence received via email from David Falkenstein, PA-C, representative of the Virginia Academy of Physician Assistants, in which he asks for guidance regarding PA's being authorized to sign DNR forms.

After some discussion, Dr. Bell moved that no action be taken since there was nothing in the law that clearly precluded PA's from signing DNR forms. The motion was seconded and carried unanimously.

The motion as record was "Let the record show that the Board agrees with the logic, but will not be providing notification to the hospitals".

Dr. Hoffman moved that a guidance document similar to the Board of Nursing's Authority for NP's to Sign DNR Forms be developed and posted on Medicine's website. The motion was seconded and carried unanimously.

Licensing Report

Ms. Powers reported that the Licensing Section was in good shape. The on-line dynamic application was up and running but there are still some bugs to be worked out. Ms. Powers confirmed that there have been 4 new licenses granted under the newest profession, Radiology Assistant.

Mike Gallini of the Data Division addressed the Board on the Ad Hoc on Competency's proposal to have the CME form placed on the Profile system. The form would serve as a single place to collect all of the practitioner's educational activity and provide an opportunity for a 100% audit by the Board. This approach would also allow the public to see what the practitioner has been doing to stay abreast of current medical practices and procedures.

Mr. Gallini stated that DATA has designed a model that could be implemented fairly easily and that would address data input by licensees and making it accessible to the public, however, it would not allow for the importation of data from other electronic sources.

Dr. Hoffman moved that Mr. Gallini provide a layout of the proposal for the Board to discuss at a future meeting. The motion was seconded and carried.

Discipline Report

Ms. Deschenes advised that this has been a very busy year for Consent Orders. She reported that as of February 20, 2012 there were a total of 592 Medicine cases in various disciplinary stages. She also reported on the number of cases closed since the beginning of the year and the number of actions taken in calendar year 2011.

Ms. Deschenes also provided an update on the steps being taken to reach maximum efficiency with medical malpractice cases. She said that she, Dr. Harp and Enforcement met to review approximately 50 cases from the years 1993-2000. The reason for the age of these cases was the demise of an insurance company which has just recently begun settling some of its cases and reporting them to the Board. Ms. Deschenes said that even though there is not a statute of limitations on these reports, the Board must operate with a sense of fairness. The meeting with Enforcement yielded 2 parameters to guide the investigative process, 7 years and \$75K. Cases that are older than 7 years or less than \$75K will still be fully investigated if there appears probable cause to do so.

After discussion, Dr. Ransone moved that 7 years and \$75K be the established investigative parameters. The motion was seconded and carried unanimously.

Review of Recommendation regarding FSMB's Essentials of a State Medical and Osteopathic Practice Act and Elements of a State Medical and Osteopathic Board

Dr. Dalton encouraged everyone to read the enclosed materials.

Nominating Committee

Mr. Heretick, Dr. Bell, and Dr. Piness volunteered to serve on the Nominating Committee. The Committee will meet on the morning of June 21, 2012 and present its slate of officers to the Board for consideration later that morning.

Announcements

Staff reminded the Board members of their hearing assignments for the remainder of the day.

Adjournment: With no other business to conduct, the meeting adjourned at 12:39 p.m.

Next scheduled meeting: June 21, 2012

Claudette Dalton, M.D.
President, Chair

William L. Harp, M.D.
Executive Director

Colanthia M. Opher
Recording Secretary