

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 22, 2017

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Dr. Allison-Bryan called the meeting of the Board to order at 8:52 a.m.

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

MEMBERS PRESENT: Barbara Allison-Bryan, MD, President
Ray Tuck, DC, Secretary-Treasurer
Syed Ali, MD
David Archer, MD
Lori Conklin, MD
Deborah DeMoss Fonseca
David Giammittorio, MD
Jane Hickey, JD
Isaac Koziol, MD
Wayne Reynolds, DO
David Taminger, MD
Kenneth Walker, MD

MEMBERS ABSENT: Randy Clements, DPM
Alvin Edwards, PhD
The Honorable Jasmine Gore
Maxine Lee, MD
Kevin O'Connor, MD, Vice-President
Svinder Toor, 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
Colanithia Morton Opher, Operations Manager
Sherry Gibson, Administrative Assistant
David Brown, DC, DHP Director
Lisa Hahn, MPA, DHP Chief Deputy Director
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: K. Martin, HDJN
Kim Pekin, Premier Birth Center
Christina Miller, Beautiful You

---FINAL APPROVED---

Michelle Lannie, SoVA Laser
Carol Morton, SoVA Laser
David Garland, Bio Delivery Sciences
Sara Heisler, VHHA
Nicole Pugar, ACOG-VA
Julie Galloway, MSV

EMERGENCY EGRESS PROCEDURES

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

DHP DIRECTOR'S REPORT

Dr. Brown introduced the agency's new Enforcement Director, Michelle Schmitz. Dr. Brown said that Ms. Schmitz comes to the agency from the US Office of the Inspector General where her duties included oversight of healthcare fraud.

Ms. Schmitz told the Board that she was honored to be at DHP and looks forward to working with all the boards to provide satisfactory and timely investigations.

Dr. Brown announced that, effective July 1, 2017, there will be a change in the conduct of informal conferences. Adjudication specialists will not participate in closed session unless requested by the informal conference committee to do so. If that occurs, the adjudication specialist will not be able to represent DHP and the Board in a subsequent formal hearing. To avoid having the adjudication specialist that prepared the Notice and best knows the case having to bow out after an informal, a substitute adjudication specialist can participate in the closed session to help the committee formulate the Order. With this approach, the most knowledgeable adjudication specialist will be able to represent DHP and the Board at a formal hearing.

Dr. Brown provided an update on the opioid epidemic. He said that the crisis is worsening, which makes the work of the Board all that much more important. The Emergency Regulations represent best practices, which will mean that there will be fewer Virginians dying. The regulations are a significant step forward that will improve the future; however, they do not change the circumstances for people that are already addicted. To address the addiction issue, the Department of Medical Assistance Services (DMAS) began a new program in April 2017 called Addiction and Recovery Treatment Services (ARTS) which has dramatically increased the number of providers and available beds for patients. In addition, the Virginia Department of Behavioral Health & Developmental Services received a \$10 million grant to enhance efforts of the community services boards. The challenge now is for legislators to find the funds to continue all of these services. Since the Legislature has not expanded Medicaid, Virginia is more disadvantaged than its neighboring states.

Dr. Brown also informed the members that Dr. Hazel requested two workgroups be convened. The first is to develop the curriculum for all schools that teach prescribing and dispensing, and the second to look at all the challenges surrounding electronic opioid prescribing, which is to be implemented by 2020.

APPROVAL OF THE FEBRUARY 16, 2017 MINUTES

Dr. Allison-Bryan asked that the minutes be amended to add Ms. DeMoss Fonseca as present at the February 16th meeting. Dr. Reynolds moved to accept the amended minutes. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

Dr. Tuck moved to accept the agenda as presented. The motion was seconded and carried unanimously.

VIRGINIA PHYSICIAN WORKFORCE 2016 PRESENTATION

Dr. Carter gave an informative presentation of the Healthcare Workforce Data Center's "Estimating Virginia Physician Workforce Supply and Demand with FutureDocs Forecasting". Dr. Carter noted that Indiana and Great Britain will be adopting Virginia's surveys "full cloth" for implementation in their jurisdictions, quite a compliment to Dr. Carter and her staff. Data is also being shared with the Virginia Department of Education to provide guidance counselors with occupational road maps that can be shared and discussed with students interested in careers in healthcare.

PUBLIC COMMENT ON AGENDA ITEM

Kim Pekin, Chair of the Midwifery Advisory Board and licensed midwife at Premiere Birth Center – Ms. Pekin informed the Board of the challenges midwives have been experiencing when trying to obtain lab tests and ultrasounds; they have recently been denied these services. The reason being given for the denials is that there is nothing in writing from the Virginia Board of Medicine that specifically states ordering lab tests or ultrasounds is within the scope of a midwife's practice. Ms. Pekin said that midwives want to practice safely and asked the Board members to approve the draft guidance document in their packet that lists the authority to order these tests for the clients they serve.

Christine Miller, Beautiful You – Ms. Miller addressed the Board regarding HB2119 – Laser hair removal; limits practice. She stated that, in addition to seeking more information about the restrictions to practice, she wanted to let the Board know that it would be financially burdensome to employ a licensed professional for supervision.

Michelle Lanning, owner of several hair removal businesses – Ms. Lanning addressed the Board regarding HB2119 – She came to the meeting in hopes of finding out about the regulations and how to comply.

David Garland, Bio Delivery Sciences – stood to provide a correction to information given to the Board of Pharmacy.

Nicole Pugar – representing the American College of Obstetrics and Gynecology (ACOG)-Virginia--referred to the letter from Dr. Christopher Chisholm that expressed ACOG's support of the Midwifery Advisory Board's request for a guidance document.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Allison-Bryan said that she was honored to represent the Board at the Federation of State Medical Boards (FSMB) Annual Meeting in April. She stated that she attended a session focusing on opioids and was pleasantly surprised to see that Virginia was being recognized as a model with its pain management regulations. She also noted that Virginia's decision not to participate in the Medical Licensure Compact at this time was a topic of conversation. She said the Compact has issued its first license. The cost is \$700.00 to the physician for the Compact application. Additionally, the applicant must submit the fee for the state or states in which Compact licensure is sought. Dr. Allison-Bryan stated that Virginia's proposal of licensure by endorsement is a more economical and direct route to licensure. The Compact's origin is, in part, linked to the practice of telemedicine. A spokesperson at FSMB referred to Virginia as being an exemplary telemedicine state. If Virginia is already seen as a state with quality telemedicine, there may not be an acute need for practitioners from other states to provide telemedicine care into the Commonwealth.

Dr. Allison-Bryan reported on the Board of Health Professions' review of certified anesthesiologist assistants (CAA). She noted that a CCA is the equivalent of a physician assistant, but CCA's are unable to practice as independently. There are eight schools that graduate about a half dozen students annually. Although she is not sure of the direction of this occupation, this is potentially another profession that the Board would regulate.

VICE-PRESIDENT'S REPORT

No report.

SECRETARY-TREASURER'S REPORT

No report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp reviewed the cash balance as of May 31, 2017 and noted that 99.40% of the Board's budget had already been collected in 11 months.

Health Practitioners Monitoring Program (HPMP)

Dr. Harp reviewed the HPMP Monthly Census Report as of April 30, 2017, indicating Medicine has about 25% of the participants. Preliminary numbers show that there would be 5 fewer Medicine participants in

May.

HJR780

Dr. Harp then acknowledged the email from Dr. Paul Nardo regarding HJR 780 designating each February as “Self-Care Month” beginning in 2018.

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

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

With the exception of the meeting minutes of the Regulatory Advisory Panel and Legislative Committee, Dr. Reynolds moved to accept the remaining minutes en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

Ms. Barrett provided an update on the status of the cases of Dr. Hagman, Dr. Clowdis, Dr. Pettis and Dr. Zackrisson. Ms. Barrett informed the Board that, although the Court upheld the Board’s decision, they did say that the Board erred in not allowing Dr. Zackrisson to be designated as an expert at her formal hearing. The Board did not have a standard for an expert at the time of her hearing. Ms. Barrett said the Office of the Attorney General suggests that the Board adopt an expert standard from one of the following options—the Virginia medical malpractice standard and the traditional Virginia standard. It was pointed out that the traditional Virginia standard for expert admissibility could be applied across all boards. The traditional standard states: to qualify to serve as an expert witness, an individual must possess sufficient knowledge, skill, or experience regarding the subject matter of the testimony to assist the trier of fact in the search for the truth. Generally, a witness possesses sufficient expertise when, through experience, study or observation the witness acquires knowledge of a subject beyond that of persons of common intelligence and ordinary experience. After a brief discussion, Ms. DeMoss Fonseca moved to accept the traditional Virginia standard as the expert admissibility standard. The motion was seconded and carried unanimously.

Board of Health Professions

Dr. Allison-Bryan had no report as BHP’s last meeting in December was cancelled.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck reported on his attendance at the Federation of Chiropractic Licensing Boards Annual Meeting.

He said that it was a great meeting with topics involving telemedicine, how chiropractors involved with sports are addressing the crossing of state lines with teams, the opioid crisis, and guidelines on non-pharmaceutical treatment for pain. Dr. Tuck stated that Virginia is one of two states with a blended board, and he left the meeting recognizing what an effective composite board Virginia has.

Committee of the Joint Boards of Nursing and Medicine

The meeting minutes of April 12, 2017 were included in the agenda packet.

NEW BUSINESS

1. REGULATORY AND LEGISLATIVE ISSUES

Dr. Allison-Bryan provided history on the development of amendments to the emergency regulations recommended by the Regulatory Advisory Panel (RAP) and subsequently the Legislative Committee. She said that much public comment was taken into consideration and gave credit to Dr. Harp, Elaine Yeatts, the RAP and the Legislative Committee for their hard work on the recommended amendments.

- Chart of Regulatory Actions

Dr. Harp briefly reviewed the status of the ongoing regulations that are in the pipeline and the actions that need to be taken on each.

- Legislative Proposals

Genetic Counselors

Dr. Harp said that recently it was noted the law as written kept some experienced genetic counselors certified by a predecessor organization from being licensed. The predecessor certifying body morphed into the current certification body, which is in the law, but the predecessor is not. After a brief discussion, Dr. Ali moved to adopt the draft legislative proposal as presented. The motion was seconded and carried unanimously. The language approved was as follows:

§54.1-2957.19 C – An applicant for licensure as a genetic counselor shall submit evidence satisfactory to the Board that the applicant (i) has earned a master’s degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling, or its predecessor organizations, and (ii) holds a current, valid certificate issued by the American Board of Genetic Counseling or American Board of Medical Genetics to practice genetic counseling.

Polysomnographic Technologists

Dr. Harp said that the Advisory Board on Polysomnographic Technology had discussed an issue critical to individuals obtaining their education by on-the-job training or in formal educational programs. Polysomnographic students do not have an exemption in the law to practice while in training, commonly known as a student exemption. A second issue discussed by the Advisory Board was the delay in getting

a graduate licensed. The Advisory said that it takes a number of weeks for certification to be granted after a candidate takes the Registered Polysomnographic Technologist (RPSGT) examination given by the Board of Registered Polysomnographic Technologists, which is required for licensure. A license applicant amendment to the law is being requested to allow a graduate to practice for 6 months or until he/she fails the examination. Dr. Harp advised that both of these legislative proposals have precedents. Respiratory Care has a student exemption, and Occupational Therapy has a license applicant exemption of 6 months.

Some of the Board members expressed concern with a graduate continuing to work after he/she fails the examination. They asked that language be placed in the law that it is clear to those that fail the examination, that they can no longer practice as a sleep technologist, but only perform nondiscretionary tasks as a sleep technician.

Dr. Ali moved to add at the time of first failure to the proposed language. The motion was seconded and the floor was opened for discussion.

Dr. Harp reiterated that if the proposed language is approved, the applicant will have a period of time after graduation to pass the examination. However, if the applicant is notified of a failing grade, he/she will no longer be authorized to work as polysomnographic technologist. Duties must revert back to those of a polysomnographic technician.

Dr. Allison-Bryan acknowledged the concern expressed by Board members. For the sake of clarity, Dr. Harp suggested that Board staff be given authority to develop specific language emphasizing the prohibition on practice as a sleep technologist after receiving a failing grade on the RPSGT exam.

Dr. Reynolds moved to adopt the draft legislative proposal as presented with the exception of §54.1-2957.15(C), for which staff will craft appropriate language to address the above concerns. The motion was seconded and carried unanimously.

Dr. Allison-Bryan called for a break at 10:21 a.m.; the meeting reconvened at 10:44 a.m.

- **Recommendation on Regulations for Genetic Counselors**

Dr. Harp said that the Advisory Board on Genetic Counseling met on June 5th and recommended the adoption of an amendment to 18VAC85-170-60 as it relates to the grandfathering clause. The recommendation changes the date for grandfathering from July 1, 2016 to December 31, 2018, the new date that has been established by the General Assembly's amendment to 54.1-2957.19.

Dr. Harp further stated that the Advisory Board is requesting a policy action to grant a 12-month grace period, which will run until June 13, 2018, for the licensure of genetic counselors before alleging unlicensed practice. This policy is consistent with the grace periods that have been granted to other newly licensed professions. Applicants under the grandfathering provision would still have until December 31, 2018 to apply for licensure.

After a brief discussion, Dr. Ali moved to adopt the amendment to 18VAC85-170-60 as it relates to the grandfathering clause and approve the policy action to grant a 12-month grace period for licensing genetic counselors. The motion was seconded and carried unanimously.

Dr. Harp reviewed a solitary comment received from Mr. Hetzler, Legislative Counsel at the Family Foundation. Mr. Hetzler requested that the Board not impose restrictions on genetic counselors that are not imposed by the law. Dr. Harp advised that since the regulations went into effect June 14, 2017, Mr. Hetzler's comment is appreciated, but moot.

• **Regulatory Actions – Occupational Therapy**

Dr. Harp briefly reviewed HB1484 and the amendments it invokes to 18VAC85-80-71 of the regulations on Continuing Competency.

After some discussion, Dr. Koziol moved to adopt the following changes to 18VAC85-80-71 as an action exempt from APA requirements. The motion was seconded and carried unanimously. This the language that was passed.

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall complete the Continued Competency Activity and Assessment Form that is provided by the board and shall indicate completion of at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities ~~offered by a sponsor or organization recognized by the profession and may include in service training, self-study courses, continuing education courses, specialty certification, or professional workshops~~ which shall consist of an organized program of study, classroom experience, or similar educational experience that is related to a licensee's current or anticipated roles and responsibilities in occupational therapy and approved or provided by one of the following organization or any of its components:

- a. Virginia Occupational Therapy Associations;
- b. American Occupational Therapy Associations;
- c. National Board for Certification in Occupational Therapy;
- d. Local, state, or federal government agency;
- e. Regionally accredited college or university;
- f. Health care organization accredited by a national accrediting organization granted authority by the Centers for Medicare and Medicaid Services to assure compliance with Medical conditions of participation; or
- g. An American Medical Association Category 1 Continuing Medical Education program.

Next, Dr. Harp told the members of the Board that it must withdraw or modify proposed amendments to the regulations already in the pipeline.

After a brief discussion, Dr. Reynolds moved to adopt the following amendments and to withdraw 18VAC85-50-71(A)(3).

REGULATIONS GOVERNING THE LICENSURE OF OCCUPATIONAL THERAPISTS
PRACTICE OF OCCUPATIONAL THERAPY

18VAC85-80-71. Continued competency requirements for renewal of an active license.

A. In order to renew an active license biennially, a practitioner shall ~~complete the Continued Competency Activity and Assessment Form that is provided by the board and that shall indicate completion of~~ complete at least 20 contact hours of continuing learning activities as follows:

1. A minimum of 10 of the 20 hours shall be in Type 1 activities offered by a sponsor or organization recognized by the profession and may include in-service training, self-study courses, continuing education courses, specialty certification or professional workshops.
2. No more than 10 of the 20 hours may be Type 2 activities, which may include consultation with another therapist, independent reading or research, preparation for a presentation or other such experiences that promote continued learning.
- ~~3. The board recognizes the maintenance of current NBCOT certification as fulfilling the requirements of this subsection.~~

B. A practitioner shall be exempt from the continuing competency requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain ~~in his records the completed form of~~ continuing competency courses and activities with all supporting documentation for a period of six years following the renewal of an active license.

D. The board shall periodically conduct a random audit ~~of at least one to two percent~~ of its active licensees to determine compliance. The practitioners selected for the audit shall provide ~~the completed Continued Competency Activity and Assessment Form and~~ all supporting documentation within 30 days of receiving notification of the audit.

Dr. Harp noted that the Data Division will assist with determining what constitutes a random audit.

• **NOIRA for Supervision and Direction of Laser Hair Removal**

Dr. Harp referred to HB2119, which goes into effect July 1, 2017. It requires that laser hair removal be performed by a licensed doctor of medicine, osteopathic medicine, physician assistant, or nurse practitioner. It also authorizes doctors of medicine, osteopathic medicine, physician assistants and nurse practitioners to supervise properly trained individuals in the performance of laser hair removal. Regulations are necessary to define direction, supervision, and what constitutes a properly trained person. Dr. Harp stated that the intent of this NOIRA is to develop and implement regulations for physicians, physician assistants and nurse practitioners.

After discussion, Dr. Conklin moved to adopt the NOIRA to implement HB2119 in regulations 18VAC85-20, 18VAC85-50 and 18VAC90-30. The motion was seconded and carried unanimously.

- **Draft regulations for Licensure by Endorsement**

Dr. Harp briefly reviewed the background document and the draft regulations as recommended by the Legislative Committee. He advised that no comment was received during the 1/23/17 to 2/22/17 public comment period.

Mr. Heaberlin provided an example of how this process will shorten the licensing time by accepting the National Practitioner Data Bank report in lieu of the American Medical Association profile and the Federation of State Medical Boards disciplinary report.

Dr. Ali stated that licensure by endorsement as proposed is very similar to the Compact, offering a simplified way to identify the best applicants and license them through an expedited process.

Dr. Reynolds moved to adopt the proposed regulations as recommended by the Legislative Committee. The motion was seconded and carried unanimously.

- **Guidance Document for Licensed Midwives**

Dr. Harp reiterated the concern voiced by Ms. Pekin during public comment about midwives being denied orders for laboratory tests, ultrasounds, and biophysical profiles. Those challenges are the reason the Advisory is requesting clarification through the development of a guidance document that would inform all parties regarding the authority of licensed midwives to order testing.

Dr. Allison-Bryan pointed out that the scope of practice is in the law and if the laboratories are not recognizing that, what weight will a guidance document have?

Dr. Harp suggested the guidance document should include page 22 of the North American Registry of Midwives (NARM) which includes the scope of duties outlined under prenatal care, and also suggested that the link to the NARM Job Analysis 2016 be included.

Ms. Deschenes reminded the members that NARM allows some prescribing by midwives, so the Board needs to be careful when referring to a national document.

Dr. Allison-Bryan asked for a motion to accept the guidance document with an amendment to refer for urine “screening tests”. No motion was made.

Dr. Giammittorio stated that screening tests are part of taking care of a normal pregnancy. However, biophysical profiles and non-stress tests place the pregnancy in a high risk category. If the scope of practice is clear that a licensed midwife has the authority to care for the mother up to 40 weeks, then the midwife needs to be able to do so safely, and that would include access to labs and other tests.

After a lengthy discussion, Dr. Conklin called the question.

A motion was made to adopt the guidance document with amended language, “Obtains or refers for urine ~~culture~~ screening tests”. The motion was seconded and carried unanimously.

- **Guidance Document – Telemedicine**

Dr. Harp said that, with recent amendments to the Code on prescribing by telemedicine, the guidance documents for Medicine (85-12) and Nursing (90-64) need to be amended to be in step with the law. The amended telemedicine guidance documents presented are identical, except for the preamble in the guidance document for nurse practitioners.

Dr. Reynolds moved to adopt the revisions to guidance documents 85-12 and 90-64. The motion was seconded and carried unanimously. The amended guidance document for nurse practitioners was approved by the Joint Boards of Nursing and Medicine on June 7, 2017; it will go to the Board of Nursing for approval.

- **Regulations Governing Prescribing of Opioids and Buprenorphine (Medicine)**

Dr. Allison-Bryan stated that, looking back 10 years when these regulations were originally developed but not implemented, the amount of work that was done between January and March of this year is truly amazing. She thanked all those that had been involved in their derivation.

Dr. Harp reviewed the changes recommended by the Regulatory Advisory Panel on May 15, 2017 and what the Legislative Committee had approved on May 19, 2017 to go forward to the full Board.

After discussion, the Board unanimously agreed to re-adopt the amended emergency regulations and adopt the proposed regulations to replace the emergency regulations.

- **Regulations Governing Prescribing of Opioids and Buprenorphine (Nursing)**

Dr. Reynolds moved to adopt the proposed revisions to the nurse practitioner regulations for prescribing of opioids and buprenorphine consistent with the regulations for Medicine. The motion was seconded and carried unanimously.

LICENSING REPORT

Mr. Heaberlin reported that the Board had issued 5,828 licenses since July 1, 2016 and anticipates a few more in the remaining 8 days of this fiscal year cycle. He also reported that two applications for genetic counseling had been received. Mr. Heaberlin asked the Board's approval to accept the NPDB report for all physician applicants in lieu of the AMA profile and FSMB disciplinary report beginning July 1, 2017. The Board unanimously agreed.

DISCIPLINE REPORT

Ms. Deschenes referred to the handout provided and gave a quick case status update. She pointed out that half of the cases in pending status are at APD due to APD being short-staffed.

This report was for informational purposes only.

APPROVAL OF THE 2018 BOARD MEETINGS CALENDAR

---FINAL APPROVED---

The Board unanimously agreed to accept the calendar as presented.

SERVICE PLAQUE PRESENTATIONS

Dr. Allison-Bryan presented plaques in recognition for their 1st term of service on the Board to:

- § Lori Conklin, MD
- § Deborah DeMoss Fonseca
- § Nathaniel Tuck, DC

NOMINATING COMMITTEE REPORT

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

- § Kevin O'Connor, MD – President
- § Ray Tuck, DC, – Vice-President
- § Lori Conklin, MD – Secretary-Treasurer

With no other nominations from the floor, the Board unanimously accepted the slate as presented.

ANNOUNCEMENTS

There were no announcements.

ADJOURNMENT

Dr. Allison-Bryan adjourned the meeting at 12:07 p.m.

Barbara Allison-Bryan, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary