

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

October 26, 2017

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Dr. O'Connor called the meeting of the Board to order at 8:34 a.m.

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

MEMBERS PRESENT: Kevin O'Connor, MD, President
Ray Tuck, DC, Vice-President
Lori Conklin, MD, Secretary-Treasurer
Syed Ali, MD
Barbara Allison-Bryan, MD
Randy Clements, DPM
Alvin Edwards, PhD
David Giammittorio, MD
The Honorable Jasmine Gore
Jane Hickey, JD
Isaac Koziol, MD
Maxine Lee, MD
Wayne Reynolds, DO
David Taminger, MD
Svinder Toor, MD
Kenneth Walker, MD
Martha Wingfield

MEMBERS ABSENT: David Archer, 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
Deirdre Brown, Administrative Assistant
Lisa Hahn, MPA, DHP Chief Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Tyler Cox, MSV
Becky Bowers-Lanier, VMA
Maya Hawthorn Gunderson, VMA, Midwifery Advisory

EMERGENCY EGRESS PROCEDURES

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

APPROVAL OF THE JUNE 22, 2017 MINUTES

Dr. Reynolds moved to approve the June 22, 2017 as presented. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

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

PUBLIC COMMENT ON AGENDA ITEM

Maya Hawthorn Gunderson addressed the Board as a member of the Midwifery Advisory Board. She provided comment on Guidance Document 85-28. She said the Advisory Board was requesting the authorization to order ultrasounds and other testing throughout pregnancy. She also spoke to the Advisory Board's request to amend the midwifery regulations to bring them into alignment with NARM. NARM allows a midwifery student up to 10 years of training/experience in order to fulfill the qualifications to sit for its examination.

The floor closed for comment at 8:43 a.m.

INTRODUCTION OF NEW BOARD MEMBER

Dr. O'Connor introduced Ms. Wingfield as the newest board member to the Board of Medicine.

Ms. Wingfield provided a brief overview of her background in community health and stated that she looks forward to working with the Board.

PRESENTATION TO LANA WESTFALL

Dr. O'Connor introduced Lana Westfall from the Office of the Secretary of the Commonwealth.

Dr. Harp presented Ms. Westfall with a plaque that expressed the Board's gratitude for her work in securing Board member and Advisory Board member appointments during this administration.

Ms. Westfall said that it was a joy to be able to attend this meeting, for she was now able to put names with faces. She said she joined the Office of the Secretary of the Commonwealth January 20th almost 4 years ago, so she been instrumental in appointing or reappointing most of the members on the Board of Medicine. She said that all the health regulatory boards were near and dear to her heart, and she has enjoyed working with everyone. She also thanked all the Board members for their service.

Dr. Harp said that the Board was honored to have her in attendance and wanted all to know the great resource and great communicator she has been. Dr. Harp then invited other DHP Executives in attendance to make comments.

Dr. Liz Carter, Executive Director for the Board of Health Professions, stated that Ms. Westfall has been outstanding, and because of her diligence, BHP has a full complement of members. Ms. Carter said that Caroline Juran, Executive Director for the Board of Pharmacy, was unable to attend but echoes the same sentiment.

Lisa Hahn, DHP Deputy Director for the Department of Health Professions, said that Ms. Westfall has been the most responsive, most participatory, and greatest support to our agency, and it was a pleasure working with her.

Corie Tillman-Wolf, Executive Director for Funeral Director and Embalmers, Long-Term Care Administrators, and Physical Therapy, said that she's only been in the Executive Director role for less than a year. Ms. Westfall has made the process of appointments easy and collaborative and thanked her for her dedication.

DHP DIRECTOR'S REPORT

Ms. Hahn reviewed PMP statistics as a measure of the impact of the Commonwealth's strategies related to the opioid crisis. She stated that there had been a dramatic decrease in patients receiving opioid prescriptions since the Board's regulations went into effect.

Ms. Hahn informed the members that DHP has acquired additional space on the first floor. It is anticipated that the agency receptionists, IT department, mail services, and the Business Research and Planning Division will be relocated to the new space in 2018.

Ms. Hahn also explained that Board disciplinary cases that were continued would be handled differently with the Board's statistics in Virginia Performs. The time provided to the respondent for a continuance will no longer be counted against the Board's statistics.

Ms. Hahn reported that videos on probable cause, sanction reference points, conflict of interest, and chairing board meetings/hearings are being developed for new board members.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. O'Connor provided a brief report on his attendance at the Tri-Regulator Conference in September. Dr. O'Connor stated that it was a great opportunity to exchange ideas and explore common concerns and potential solutions with professional colleagues. He said that the majority of time was spent on the opioid crisis and its significance to all the professions. It is his belief that the greatest impact will be made by legislation.

He also spoke about his participation in a Legislative hearing regarding the establishment of the Doctor of Medicine Science profession. Those in favor of this effort seek to elevate physician assistants to practice more like primary care physicians. Such individuals would have an expanded scope of practice and less supervision. A Southwest Virginia legislator sees this as a way to increase access to care in rural areas. The school that currently offers this program is in Tennessee. It appeared that the physician assistant community was not supportive of the Doctor of Medical Science profession.

These reports were for information purposes only.

VICE-PRESIDENT'S REPORT

No report.

SECRETARY-TREASURER'S REPORT

No report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp noted that the Board's cash balance as of September 30, 2017 is \$8,727,384.

Dr. Harp reminded the Board members that in order to bring our cash balance in line with the law, the Board voted to reduce its renewal fees in 2014-2016 by 14%. For the 2016-2018 biennium, the Board voted to reduce renewal fees by 20%. Although the current cash balance is less than it was a year ago, the Board will again need to consider a reduction in fees, since next year will be a big revenue year.

Enforcement, Administrative Proceedings (APD), Health Practitioners Monitoring Program (HPMP) Reports

Dr. Harp reviewed the utilization of Enforcement and APD resources and noted that if trends hold true, the Board's usage will be up 7% during the next year. In reviewing the HPMP Monthly Census Report, Dr. Harp stated that the average number of participants remains about 450 with Medicine accounting for 25% of that total.

Laser Hair Removal

Dr. Harp informed the Board members that the General Assembly has tasked the Board with providing clarity in the practice of laser hair removal through regulations. A Regulatory Advisory Panel, chaired by a previous Board of Medicine member, Jane Piness, will be meet November 20, 2017 to define "adequate training" and "supervision" for physicians, nurse practitioners, physician assistants, and other individuals for the practice of laser hair removal.

Dr. Harp then welcomed Martha Wingfield to the Board.

Dr. Harp said that Jennifer and he had received an e-mail from Ms. DeMoss Fonseca expressing gratitude for her time on the Board and her honor of working alongside such dedicated group of professionals.

Dr. O'Connor noted that she will be missed.

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

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

Dr. Edwards 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 following cases:

Dr. Zackrison's case has concluded.

Dr. Hagmann's case is still pending.

Dr. Clowdis' case, begun in 2013, is still pending.

Dr. Merchia's case will have a hearing on the merits in early December.

Dr. Garada's case will have a hearing in mid-November.

Board of Health Professions

Dr. Allison-Bryan reported that DHP was in the process of designing a new logo. She has enjoyed being a part of the committee working with VCU on this effort.

She also reported that the Regulatory Research Committee of the Board of Health Professions heard testimony on Certified Anesthesiology Assistants (CAA) and determined not to recommend licensure at this time. Dr. Allison-Bryan also noted that naturopaths may be seeking licensure.

Dr. Lee informed the Board that she was very much involved in bringing the question of licensure for anesthesiology assistants to the Board of Health Professions. She said she believes that CAAs have training equivalent to a physician assistant and nurse practitioner. If licensed to practice to the fullness of their education and training, CAA's could help forestall delays in surgery, delays which can range from inconvenient to life-threatening. A senator that may carry a bill to the General Assembly is well aware that there may be some controversy surrounding this issue. The BHP study was requested in hopes that it would recommend licensure in support of a bill in

the General Assembly. During the public comment period, 150 letters were received in support of licensure, and only 50 opposed it. It was the highest number of comments received by BHP to date. Despite 301 comments in favor of licensure, BHP did not recommend it. Dr. Lee believes that one member repeatedly spoke against licensure and brought forward multiple erroneous comments. She said that not much more can be done at this time, but BHP's action will delay the opportunity to bring this issue to the General Assembly for at least 4 more years.

Dr. O'Connor noted that all the meeting minutes were for information only.

Dr. Edwards asked what BHP saw as an issue with licensure of the CAA profession.

Dr. O'Connor stated that this was outside the Board of Medicine's scope to address.

Dr. Conklin commented that it is not a matter of the training of CAA's or their experience. They want to work to the limits of their training and skills, but are being denied.

Dr. Clements asked if it was reasonable to request BHP to do a workforce study.

Ms. Barrett advised that the Board of Medicine does not have the ability to request a study; BHP gets its study orders from the General Assembly.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck had no report.

Committee of the Joint Boards of Nursing and Medicine

Dr. O'Connor had no report but looks forward to continued service at the Board.

NEW BUSINESS

1. REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

Ms. Yeatts briefly reviewed the Board's regulatory activity and the actions needed to be taken with each.

- Legislative Proposals

Ms. Yeatts presented a list of the legislative proposals for the 2018 General Assembly highlighting:

1. **Clarification for electronic renewal notice** – amends Code sections for the Boards of Funeral Directors and Embalmers, Medicine, and Nursing that require renewal notices to be sent by “mail” to licensees. The amendments will clarify that each board may send such notices electronically.
2. **Addition of Schedule V and naxolone to PMP** – adds naloxone and Schedule V drugs to the definition of covered substances to be included in a Prescription Monitoring Program (PMP) report.
3. **Student exemption for polysomnographic technologists** – amends the Code to provide license exemptions for a student polysomnographic technologist to practice under supervision for a period of up to 18 months from the beginning of an educational program, and to practice for up to six months in a traineeship after finishing his/her program.

Proposed Regulatory Action – Nursing/Elimination of Separate License for Prescriptive Authority

Ms. Yeatts advised that the Joint Boards of Nursing and Medicine discussed the elimination of a separate license for prescriptive authority for nurse practitioners. The Code of Virginia does have certain requirements for prescriptive authority but does not mandate a separate license. The Joint Boards’ action to implement elimination of the separate license must be accomplished by regulation, beginning with a Notice of Intended Regulatory Action (NOIRA).

Dr. Reynolds moved to adopt the recommendation of the Joint Boards for the adoption of a NOIRA to begin the regulatory process to eliminate a separate prescriptive authority license. The motion was seconded and carried unanimously.

Regulatory Action – Fee Reduction

Ms. Yeatts referred Board members to the letter from Dr. Brown, DHP Director, and supporting documentation for the recommendation of a one-time reduction in renewal fees for the next biennium.

After a brief discussion, Dr. Edwards moved to adopt the amendments to the regulations for reduction of renewal fees for the next biennium by 20%. The motion was seconded and carried unanimously. As noted, the reduction would begin January 2018 and run through December 2020 for all professions licensed by the Board of Medicine.

Regulatory Actions – Licensed Midwives

Ms. Yeatts said that the Advisory Board on Midwifery had noted that midwifery students can perform midwifery tasks under direct and immediate supervision, while enrolled in an accredited midwifery program or during a NARM portfolio pathway, but they can only do so for three years.

Completion of a NARM portfolio can take up to 10 years, if the supervising midwife has a very small practice. NARM will not accept student midwifery experience beyond 10 years.

Therefore, the Advisory has recommended an amendment to 18VAC85-130-45 to synchronize the regulations with NARM, which if approved would be done by fast-track action.

Dr. Edwards moved to adopt changes to 18VAC85-130-45 as recommended by the Advisory Board.

Guidance Document

The Advisory Board on Midwifery recommended an amendment to Guidance Document 85-28 Authority to Order Tests to address the possibility that a midwife may need to order an ultrasound earlier in a pregnancy, not just for a post-date pregnancy.

The document would be amended as follows:

Under Prenatal Care

Assess and evaluate a ~~post-date~~ pregnancy by monitoring/screening:
Consult or refer for:

- Ultrasound
- Non-stress test
- Biophysical profile

Dr. Edwards moved to adopt the recommendation of the Advisory Board for the amendment to Guidance Document 85-28. The motion was seconded and carried unanimously.

Adoption of Notice of Intended Regulatory Action (NOIRA) for Physician Assistants

Ms. Yeatts said that the Advisory Board on Physician Assistants is recommending adoption of a NOIRA for the purpose of simplifying and clarifying the definitions of supervision and for more consistency with the Code and everyday practice. The action also adds a provision in the section on Pharmacotherapy for Weight Loss to clarify that a physician assistant can conduct the initial physical examination, review tests, and prescribe drugs, if so stated in the practice agreement.

Dr. Edwards moved to adopt a NOIRA with the substance of the proposed actions as presented. The motion was seconded and carried unanimously.

Comment on the Opioid Regulations

Ms. Yeatts referred to a copy of the Amended Emergency Regulations Governing Prescribing of Opioids and Buprenorphine and two comments from Regulatory Town Hall. She noted that there was no need to respond or take any action. There has been a significant amount of activity in the offices of the Secretary and Governor regarding drug screens that indicate some tweaking of the regulations may be needed. Ms. Yeatts said that the question is whether the Governor will approve the Emergency Proposed Regulations and then allow amendments, or send them back to the Board to amend before publication.

Dr. O'Connor stated that 175 citizens die from opioid overdose in the US everyday.

Dr. Allison-Bryan suggested that providing the graphs to which Ms. Hahn referred at the top of the meeting would be helpful.

Dr. Ali stated that the impetus for the regulations was physicians being too willing to prescribe opioids, and it's the Board's job to protect the citizens of the Commonwealth.

Ms. Deschenes said that we are facing the same issue as in 2007 with drug screens; had these regulations been put in place then, it is possible we would not be facing the epidemic that we see now.

Ms. Gore added that another factor to consider is the economic toll the epidemic takes on localities in terms of law enforcement manpower.

Ms. Barrett stated that, at a recent meeting, attendees were very impressed with what Virginia has done with opioid prescribing.

Dr. Reynolds noted that practitioners will find the reports from PMP useful and be more cognizant of their prescribing habits.

Dr. Lee asked if there are separate regulations for nurse practitioners. Ms. Yeatts advised that the nurse practitioner regulations are essentially identical to Medicine's regulations.

2. BOARD OF MEDICINE BYLAWS

Dr. Harp advised that the Board's Bylaws need to be reviewed periodically for currency and to recommend revision if necessary. As it stands, the changes lie in including the new professions of genetic counselors and behavior analysts to the list under Report of Advisory Boards.

Dr. Clements posed the question of moving the election of officers to the October meeting after appointments have been made.

After a brief discussion, it was determined that there were no advantages to amend the election date.

Dr. Harp said that the Bylaws will be provided two weeks prior to the February Board meeting, and any amendments will be voted on at the meeting.

3. CREDENTIALS COMMITTEE RECOMMENDATION FOR FORM B'S

Dr. O'Connor began by explaining that the recommendations being presented are driven by concerns of applicants who practice telemedicine being able to obtain FORM B's from all hospitals, clinics, and facilities where they had been granted privileges in the last 5 years.

Mr. Heaberlin went on to explain many of the FORM B's received on behalf of these individuals have little information other than the dates of services, and many have been difficult to get. Board staff is requesting the following:

---FINAL APPROVED---

- A) FORM B from the chief medical officer of a telemedicine company to suffice instead of requiring a FORM B from all sites of services. Dr. Edwards moved to accept and the motion was seconded and carried unanimously.
- B) Extend the exemption of FORM B's from all sites in lieu of a FORM B from the chief medical officer to all specialties practicing telemedicine. Dr. Edwards moved to accept and the motion was seconded and carried unanimously.
- C) Require only 2 years of FORM B's if the applicant is in a profession for which the Board receives an NPDB report. Dr. Edwards moved to accept and the motion was seconded and carried unanimously.
- D) Accept that all applicants/professions that cannot provide a NPDB report submit 5 years of FORM B's. Dr. Edwards moved to accept and the motion was seconded and carried unanimously.

The question of whether the Board should issue a telemedicine license was raised. Dr. O'Connor advised that the Credentials Committee had discussed the issue and determined it was not within the Board's authority to do so.

LICENSING REPORT

Mr. Heaberlin provided the members with the total number of licenses issued over the last two fiscal years. As of October 17, 2017, there were 69,117 licensees under the Board of Medicine. Medicine and Surgery – 38,116; Osteopathy – 3,371; Chiropractors – 1,757 and Podiatrists – 541; all other professions - 25,332.

DISCIPLINE REPORT

Ms. Deschenes gave a quick update on the status of discipline cases. She anticipates that APD will begin moving cases to the Board as APD has filled some of their vacancies. Cases may be slow in coming until the new adjudication specialists are acclimated to the Board's regulations and processes.

Ms. Deschenes then presented a reinstatement Consent Order for Brandon Jennings Watson, MD.

After a summarization of the findings of fact, Dr. Edwards moved to accept the Consent Order as presented.

Dr. Conklin asked that the entire Consent Order be presented before voting.

Ms. Deschenes explained that the action taken was the result of a mandatory suspension, and no patient harm was involved.

The standing motion was then seconded and carried unanimously.

ANNOUNCEMENTS

Travel vouchers are due by November 23, 2017.

ADJOURNMENT

Dr. O'Connor adjourned the meeting at 10:32 a.m.

Kevin O'Connor, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary