

**VIRGINIA BOARD OF MEDICINE  
EXECUTIVE COMMITTEE MINUTES**

---

Friday, August 4, 2017                      Department of Health Professions                      Henrico, VA

**CALL TO ORDER:**                      The meeting convened at 8:34 AM.

**ROLL CALL:**                              Ms. Opher called the roll; a quorum was established.

**MEMBERS PRESENT:**                      Kevin O'Connor, MD, President & Chair  
Randy Clements, DPM  
Alvin Edwards, MDiv, PhD  
Jane Hickey, JD  
Maxine Lee, MD  
Nathaniel Tuck, Jr., DC, Vice-President

**MEMBERS ABSENT:**                      Syed Salman Ali, MD  
Lori Conklin, MD, Secretary-Treasurer

**STAFF PRESENT:**                      William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Director, Discipline  
Alan Heaberlin, Deputy Director, Licensure  
Barbara Matusiak, MD, Medical Review Coordinator  
Colanthia Morton Opher, Operations Manager  
Sherry Gibson, Administrative Assistant  
Erin Barrett, JD, Assistant Attorney General

**OTHERS PRESENT:**                      Scott Johnson, JD, MSV  
B. Tilman Jolly, MD, Specialists on Call

**EMERGENCY EGRESS INSTRUCTIONS**

Dr. O'Connor provided the emergency egress instructions.

**APPROVAL OF MINUTES OF APRIL 7, 2017**

Dr. Edwards moved to approve the meeting minutes of April 7, 2017 as presented. The motion was seconded and carried unanimously.

**ADOPTION OF AGENDA**

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

## **PUBLIC COMMENT**

There was no public comment.

## **DHP DIRECTOR'S REPORT**

In Dr. Brown's absence, Dr. Harp provided the comments that Dr. Brown wanted to convey to the Committee. He told the Committee about HB 2161, which authorizes the Secretary of Health and Human Resources to convene a workgroup with representatives from the Department of Behavioral Health and Developmental Services, Department of Health, Department of Health Professions, State Council on Higher Education for Virginia, and at least one representative from each medical school, dental school, pharmacy school, physician assistant program, and nursing program located in the Commonwealth. The task of the workgroup will be to develop educational standards and curricula for training health care providers in the safe and appropriate use of opioids to treat pain while minimizing the risk of addiction and substance abuse. Such educational standards and curricula shall include education and training on pain management, addiction, and the proper prescribing of controlled substances. The workgroup shall report its progress and the outcomes of its activities to the Governor and the General Assembly by December 1, 2017. DHP is the lead agency for this workgroup, and meetings have already occurred.

Dr. Harp also said that SB 1230 requires the Secretary of Health and Human Resources to convene a workgroup to review the actions necessary for the implementation of electronic prescriptions for controlled substances containing an opioid. On July 1, 2020, all opioid prescriptions will have to be transmitted electronically. The workgroup first met on August 2, 2017. DHP is also the lead agency for this workgroup.

## **PRESIDENT'S REPORT**

Dr. O'Connor reported on his attendance at the Tri-Regulator Symposium held in Chicago. He said the meeting was hosted by the Federation of State Medical Boards (FSMB), the National Association of Boards of Pharmacy (NABP) and the National Council of State Boards of Nursing (NCSBN). These organizations represent approximately 6 million healthcare providers. Dr. O'Connor stated that it was a great opportunity to exchange ideas and explore common concerns and potential solutions. He said that the majority of the time was spent on the opioid crisis and its significance to all the professions. It became clear that the way in which Virginia boards could have the most impact is in educating legislators. Dr. O'Connor said that it is his belief that the process Virginia undertook to create workable opioid regulations will be a model for many states as they tackle this critical issue.

## **EXECUTIVE DIRECTOR'S REPORT**

### Quarterly Performance Measurements

Dr. Harp reviewed the Board's performance report on the clearance rate of cases, the pending caseload, and time to disposition. He gave great credit to the Board members and Dr. Matusiak. Dr. Edwards asked how Virginia stacked up with other states. Ms. Deschenes

said that Medicine cases are to be closed in 250 days and that Virginia is one of the few states that has required timeframes for closure. In querying other states, she learned that a number averaged 3-5 years for closure of cases. In recent years, Virginia has been much faster in closing cases than it used to be.

Dr. O'Connor thanked Dr. Matusiak and the Board members for their good work.

#### Revenue and Expenditures

Dr. Harp reported that the cash balance as of June 30, 2017 was \$10 million and that the Board came in \$18,000 under budget in FY2017. He commended Charles Giles and Elaine Yeatts for their great forecasting.

#### New Board Liaison Representative

Dr. O'Connor announced that he was the new Board liaison to FSMB. Claudette Dalton, former Virginia Board President and current FSMB Board Member, will continue as the liaison from FSMB to the Virginia Board. Dr. O'Connor said that the Interstate Medical Licensure Compact and the Board's regulations for Endorsement would probably be topics of discussion.

### **NEW BUSINESS**

#### Telemedicine Licensure and FORM B's

Dr. Harp introduced this topic by saying that telemedicine practitioners applying for a Virginia license are seeking the same consideration that tele-radiology and tele-pathology have in regards to FORM B's. The Board previously granted tele-radiology and tele-pathology applicants an exemption to getting a FORM B from every hospital or facility where he/she had provided services in the last 5 years. A FORM B and a letter listing the locations and signed by the program director of the tele-radiology or tele-pathology company were deemed acceptable to the Board.

Dr. Jolly, Chief Medical Officer for Specialists on Call, provided a brief presentation on the services provided by the telemedicine practitioners employed by the company. He made several points about the company for the Committee to consider. Specialists on Call:

- Is the largest provider of acute telemedicine services in rural as well as large hospitals
- Has been accredited by the Joint Commission since 2006
- Provides services in over 36 states, approximately 400 hospitals, and employs 140 physicians
- Does physician-to-physician consults in neurology, psychiatry, and critical care

Dr. Jolly stated that Specialists on Call has several physicians awaiting licensure in Virginia and that the speedbump is getting a FORM B submitted from each and every site of service.

Dr. O'Connor asked if there were currently enough Virginia critical care physicians to fill the need.

Dr. Jolly said his company provides physicians to hospitals that don't have a critical care physician, or to those that only have one and have no coverage in the physician's absence.

Dr. O'Connor said that one concern is that an unscrupulous medical director might hire practitioners that may not be prepared to provide the best medical care.

Dr. Jolly stated that would be a concern for his company as well, but at Specialists on Call, quality is paramount. Returning to the FORM B's, he pointed out that the work of the Board staff might be reduced, since there would be less documentation submitted for each telemedicine practitioner.

Dr. O'Connor asked if there was a fundamental difference between the services of an in-person critical care encounter and a telemedicine encounter.

Dr. Jolly said that there is a difference but the qualifications to provide either should be the same.

Dr. O'Connor pointed out that telemedicine x-ray and imaging studies are generally re-read or over-read in the facility as a follow-up to the telemedicine read. He inquired as to whether such a second look occurred after a tele-neurologist provided services.

Dr. Jolly said the first point of contact for Specialists on Call is with a physician, not the patient. One or more physicians are already caring for the patient in the acute setting, and follow-up with a neurologist on staff has usually been ordered.

Dr. O'Connor stated that Specialists on Call sounds like the best of the best, but the concern lies with those companies that may hire physicians that are borderline in their oversight of their practitioners and processes.

Dr. Jolly agreed that it's like the Wild Wild West for anyone that has access to a phone and the Internet. He shares that concern and will work with the Board to get past its skepticism and assist with setting standards regarding licensing if need be.

Dr. O'Connor acknowledged that our telemedicine document does not allow the use of audio-only for direct-to-consumer visits.

Ms. Hickey stated there was a Virginia study that showed a shortage of psychiatrists, particularly in the rural areas. It has been suggested that tele-psychiatry would help fill that gap. She then asked if the physicians have to be privileged at each hospital.

Dr. Jolly said that Specialists on Call has approximately 40 psychiatrists, but Psychiatry is not the company's primary focus. He advised that the physicians are privileged at every hospital.

Ms. Hickey asked what purpose does it serve to request a FORM B from every hospital or facility if the physician is licensed and already practicing in other states. Does every FORM B actually provide some value to the Board?

Ms. Deschenes said that getting all FORM B's is an incredible amount of work for the staff. If the applicant's chronological dates don't correspond to the dates on the FORM B submitted by the facility, staff has to go back and forth to get the information aligned. Ms. Deschenes reminded the Committee that the Board recently decided to accept the National Practitioner Data Bank (NPDB) report which the Board was not getting before. She also pointed out that if a telemedicine physician was working alone in his/her home and applies for a license, we ask him/her to have a colleague complete a FORM B on his/her behalf. This constitutes less oversight than what Specialists on Call is requesting.

Dr. Harp agreed with Ms. Deschenes acknowledging that a solitary practitioner providing direct-to-consumer services to 300 people in different states is under a less stringent application requirement than the physicians that work for a company accredited by the Joint Commission. The initiation of the NPDB is going to provide more information than is gathered from the FORM B's, AMA profile, and FSMB discipline report, which are required currently. The NPDB report will include hospital actions, which it does not get direct source verification from current documents. The current application does query the applicant about current/past investigations, which could also be disclosed in the NPDB data. Dr. Harp said the Board would need to develop a policy that deals with companies that are Joint Commission accredited, those that are not, and the solitary physician that does not work for a company.

Dr. O'Connor said that the question is two-fold: 1) how many FORM B's are really required, and 2) whether the Board should consider issuing a "telemedicine only" license.

Dr. Harp quoted data from FSMB that 48 state boards require a telemedicine physician to be licensed to practice into the state. Fifteen boards issue a special purpose license for telemedicine. He said that a telemedicine license was discussed by the Virginia Board in the 90's and not supported. His comment was that the Board should want just as much information about a physician who will be sitting in another state providing services to Virginia residents as someone who is moving to Virginia to set up an office. Telemedicine is new to all of us, and the perception is that it is not as safe as in-office visits. However, the Board gets more complaints about in-office visits than telemedicine. When patients decide to engage in telemedicine, it is by their choice for convenience and cost. Making such a choice might promote a greater sense of shared responsibility with the physician.

Mr. Heaberlin confirmed that the NPDB provides information on hospital privileges and professional societies. He pointed out that the FORM B issue is not just for telemedicine practitioners, but also for those who practice locum tenens.

Dr. O'Connor suggested that this item be sent to the Credentials Committee to look at the issues with the FORM B and determine not only the number that should be requested for sufficient review, but the entire concept of what should be required.

Ms. Deschenes said that the Credentials Committee met on July 26<sup>th</sup> and is forwarding their recommendation to the Executive Committee. The goal of the Board for applicants and staff is to reduce the complexity of licensure if possible. While most facilities will complete the evaluation, a good number of them provide the position held and dates of employment, perhaps completed by a HR representative.

Mr. Heaberlin said that, in the main, the FORM B is the least helpful of the supporting documents required by the application.

Dr. O'Connor stated that the consensus seems to be that the Board doesn't need 50 FORM B's. He said the Credentials Committee needs to provide a specific recommendation regarding the FORM B and its applicability in the licensing process.

Dr. Clements asked if we have access to the FORM B information through the NPDB report. What novel information do we get from the FORM B? Is it similar to a letter of recommendation?

Mr. Heaberlin agreed that it's a letter of recommendation. He also said that it wouldn't do much harm to lower the 5-year requirement for the FORM B to 3 or even 2 years. The NPDB provides information on actionable conduct about which the Board is most concerned. If a physician was dismissed from a practice, but the termination was not reported to the Data Bank, that may be picked up by a FORM B.

Dr. Lee stated that Mr. Heaberlin does not seem to be in favor of totally getting rid of FORM B.

Mr. Heaberlin advised that he has received some FORM B's with notes that say "call me to discuss". He would prefer not to require 30 FORM B's from sites at which a physician may have practiced for a week.

**MOTION:** After a lengthy discussion, Dr. Tuck moved that the FORM B topic be referred back to the Credentials Committee for a definitive suggestion on its use to include the number required. The motion was seconded and carried unanimously.

### Chart of Regulatory Actions

Dr. Harp reviewed the status of pending regulatory matters.

This report was for informational purposes only.

### Regulatory Action on Postgraduate Training for International Graduates

Dr. Harp said that Ms. Deschenes, Mr. Heaberlin and he along with Ms. Yeatts put together the draft regulations in the packet. The draft regulations include revisions to bring the regulations into compliance with the law. The amendments capture: 1) the elimination of 2

**--- FINAL APPROVED ---**

years of postgraduate training replacing it with 1 year; and 2) deletion of the options that previously could constitute 1 year of the prior 2-year requirement.

Ms. Barrett advised that this has been put in as exempt action, and it is reflective of the changes in the Code.

Ms. Deschenes pointed out that there might be confusion due to the international graduate being allowed to count a fellowship postgraduate year. American and Canadian graduates need to do one year as an intern or resident. Dr. Harp said that most of the international graduates that wish to submit a fellowship year have already done a residency in another country.

**MOTION:** Ms. Hickey moved to adopt the amendment to 18VAC85-20-122 as an exempt action. The motion was seconded and carried unanimously.

Proposed Regulatory Action – Nurse Practitioners

Dr. Harp stated that when the Code was amended in 2016 regarding nurse practitioner practice agreements, the requirement for agreements to be submitted to the Board of Nursing was eliminated. Other sections of the nurse practitioner regulations were amended, but Section 120 was inadvertently left unchanged. He noted that this change can be accomplished through a fast-track action.

**MOTION:** Dr. Edwards moved to adopt the proposed amendments to 18VAC90-40-120 by a fast-track action. The motion was seconded and carried unanimously.

Request of the Board to Approve Chiropractic Continuing Education

Dr. Harp advised that Kris Fetterman of Fetterman Events (FE) requested that the Board consider its company “any other organization” as per the regulations. He said that the Board has not approved individual coursework when requested to do so, and only a few short years ago did the Board approve the PACE program of continuing education provided by the Federation of Chiropractic Licensing Boards.

Dr. O’Connor said that his sense of “any other organization” approved by the Board was to allow for emergencies.

Dr. Tuck agreed and suggested that all organizations offering chiropractic continuing education should go through PACE.

**MOTION:** Dr. Tuck moved to deny the request and requested Board staff to notify Kris Fetterman of the decision. The motion was seconded and carried unanimously.

US Department of Veterans Affairs Request for Comment on Telemedicine



Dr. Harp said that Poonam Alaigh, MD, Acting Under Secretary for Health in the Department of Veterans Affairs, sent a letter to Humayun Chaudhry, DO, President of FSMB, asking for support in communicating to the state licensing boards the VA's plans to amend its telemedicine regulations to remove barriers and enhance access to health care services for its veterans.

Dr. O'Connor posed the question how the expansion of VA telemedicine is going to impact the Commonwealth. If the VA is taking care of its patients and staying within their scope/jurisdiction, that is laudable. The only concern is the prescribing aspect and whether controlled substance prescriptions will be presented at non-VA pharmacies.

Dr. Harp stated that the VA notifies the states of their processes, some of which may already be in place. Dr. Harp raised the question of who has jurisdiction over the practitioner based in another state.

Ms. Deschenes said that if they are not licensed in Virginia, then the Board will have no jurisdiction. And even if they are licensed in Virginia, it would be up to the VA to give the Board access to the records to properly investigate the case.

The Committee instructed Dr. Harp to send a message to Dr. Kevin Galpin, Director of Telehealth Services, thanking the VA for informing the Board of its plans, that the Board believes the plans will enhance care to veterans, and best of luck with the implementation of this new telemedicine approach.

## **ANNOUNCEMENTS**

The next meeting of the Committee will be December 1, 2017 at 8:30 a.m.

Ms. Opher reminded the members of the \$50.00 per diem for attendance at official meetings of the Board. All travel reimbursement vouchers submitted since July 1<sup>st</sup> have already been amended.

Ms. Opher also informed the Committee of the direct-billing option for lodging in Richmond when attending Board meetings. She will send out a memo to all Board members advising them of this option.

## **ADJOURNMENT**

With no additional business, the meeting adjourned at 10:05 a.m.

---

Kevin O'Connor, MD  
President, Chair

---

William L. Harp, MD  
Executive Director



**--- FINAL APPROVED ---**

---

Colanthia M. Opher  
Recording Secretary