VIRGINIA BOARD OF HEALTH PROFESSIONS
ENFORCEMENT COMMITTEE
JANUARY 12, 2004

TIME AND PLACE:	The meeting was called to order at 11:05 a.m. on Monday, January 12, 2004 at the Department of Health Professions, 6603 W. Broad St., 5th Floor, Room 1, Richmond, VA.
PRESIDING OFFICER:	Jerry A. Hinn, D.V.M., Chair
MEMBERS PRESENT:	Lynne Cooper Michelle Easton, R.Ph. David H. Hettler, O.D. Diane L. Reynolds-Cane, M.D. Demis Stewart Harold S. Seigel, D.D.S.
MEMBERS NOT PRESENT:	All members present.
STAFF PRESENT:	Robert A. Nebiker, Director Elizabeth A. Carter, Ph.D., Executive Director for the Board Howard Casway, Senior Assistant Attorney General, Board Counsel Faye Lemon, Director of Enforcement Sammy Johnson, Deputy Director of Enforcement Carol Stamey, Administrative Assistant
OTHERS PRESENT:	Neal Kauder, Visual Research Susan Stanbach Alan E. Mayer
QUORUM:	With seven members present, a quorum was established.
PUBLIC COMMENT:	No public comment was presented.
APPROVAL OF MINUTES:	On properly seconded motion by Dr. Hettler, the Committee voted unanimously to approve the minutes of the meeting of February 18, 2003 with amendment to correct adjournment time.
UPDATE ON THE SANCTION REFERENCE STUDY: **Dr. Carter; Neal Kauder, Visual Research, Inc.**	Dr. Carter informed the Committee that the Board of Medicine's Executive Committee had reviewed the manual for the piloting for that Board. The full Board of Medicine will receive their Executive Committee's recommendations

	on January 22. Unless the full Board of Medicine votes otherwise, it is anticipated that the training of Board members and implementation will begin in February.
REVIEW OF ENFORCEMENT WORKPLAN: **Dr. Carter, Mr. Johnson and Ms. Stanbach**	The Committee reviewed the attached workplan. On properly seconded motion by Ms. Stewart, the Committee voted to instruct Dr. Carter to go forward with plan on the first goal, entitled "Remaining Abreast of Agency Performance." On properly seconded motion by Dr. Easton, the Committee voted unanimously that Dr. Carter proceed with the second goal, entitled "Review of Case Priority System." On properly seconded motion by Ms. Cooper, the Committee voted unanimously for Dr. Carter to proceed with work on the third goal, entitled "Board Discretion to Move Directly to Formal Hearings on Certain Priority 1 and 2 Cases." Ms. Stewart moved to amend Ms. Cooper's motion and subsumes this review within the Review of the Case Priority System. The motion to amend was properly seconded and the vote was unanimously in favor.
NEW BUSINESS:	No new business was presented.
ADJOURNMENT:	On properly seconded motion by Ms. Stewart, the Committee adjourned at 12:15 p.m.

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Jerry A. Hinn, D.V.M., Chair

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Elizabeth A. Carter, Ph.D, Executive Director for the Board

ATTACHMENT

VIRGINIA DEPARTMENT OF HEALTH PROFESSIONS

Review of Department of Health Professions Disciplinary Processes

Draft Enforcement Committee Workplan
January 2004

Background and Authority. In organizing its activities for the upcoming year, the Board of Health Professions adopted a workplan at its October 22, 2003 meeting. This plan assigns the major tasks to the Chair and standing Committees. In keeping with its mission:

> *To review periodically the investigatory, disciplinary, and enforcement processes of the Department and the boards to ensure the protection of the public and the fair and equitable treatment of health professions (ref. §54.1-2510 (11) of the Code of Virginia).*

the Enforcement Committee will continue work on the Sanction Reference Study and develop its own workplan to:

- Continue to remain abreast of agency performance in meeting investigative and case resolution standards through periodic reports at Board meetings;

- Review reports from staff on a study of a review of the current case priority system to determine if six (6) priorities constitute an optimal management tool; and

- Determine if the case adjudication process may be streamlined through legislative amendment to allow boards to move forward to formal hearings on Priority 1 and 2 cases, rather than wait for an informal.

General Scope. The current Committee workplan addresses each in goal, in turn.

<u>Remaining Abreast of Agency Performance</u>

Department of Health Professions Directive 1.13, effective January 1, 2004 provides for an ongoing, consistent reporting (quarterly) of Department activities and programs, including those directly related to discipline.

Quarterly reports (February 1, May 1, August 1, and November 1), will be published and made available on the agency website and through hardcopy for distribution.

- Case Standards rate of compliance in accordance with DHP Directive 4.6 (attached) by Board and DHP.
- Cases Received by Board and DHP
- Cases Open by Board and DHP

- Cases Closed by Profession, Board, and DHP

Methodology. For Committee/Board meeting (or upon request in the interim), the latest version of all four Enforcement Reports will be provided to members along with staff analysis of pertinent trend data and other analyses as deemed appropriate by the Committee chair.

Review of Case Priority System

The processes involved in case investigation and adjudication cannot be viewed in the same manner as the processes involved in the manufacture of widgets. That said, it is essential for the agency's management to have the best and most appropriate tools available to them to monitor, assess, and modify as necessary performance in those processes.

Since 1983, the Department of Health Professions has employed a prioritizing system to assist in managing the investigation of cases. This system, first with three levels and then six (beginning in 1990), assigns priority levels based upon the reviewer's judgment of the level of danger to the public. Priority 1 cases reflect behavior that poses an "imminent and substantial" danger while Priority 6 cases involve acts which "threaten harm to the welfare of the public without obvious risk to the health or safety." (See attached Case Priority Assignment sheet). Since inception, Enforcement (i.e., case intake and investigation) performance measures have been tied to number of cases sent to board and the degree to which timelines associated with priority levels were met. However, once cases reached the boards, the priority of a case (with the exception of Priority 1 and perhaps 2) may not have had the same influence. Boards have anecdotally expressed that they scheduled case reviews and proceedings largely without regard to priority, rather according to when the case is presented from Enforcement and then when probable cause has been determined. Until recently, the Enforcement division bore the greatest amount of scrutiny in reviews of case resolution time.

Beginning in May of 2002, the agency instituted the current "Case Standards" (see attached Directive 4.6) to have a "yardstick" for ***overall*** case resolution performance which encompasses activities at the Board level as well as Enforcement. Although priority may still provide a useful management tool for assessing performance, the agency's overall time-related performance expectations are now based, not in priority, but in how the individual case is closed (i.e., resolved up front as no violation and without further proceeding, by pre-hearing consent order, by informal, by formal).

Overall, case resolution times have improved since the institution of the Case Standards. However, the performance pattern on the still-existing, six-level priority system has perpetually been fastest in Enforcement for Priority 1, 2, and oddly Priority 6 cases and slowest for those in the Priority 3-5 range. Comparatively, the cases in the 3-5 range constitute the greater number of cases, and this same pattern has generally held for over a decade.

The current Priority/Case Standards management system needs supplementation with an analysis of empirically discerned factors that characterize the cases being investigated. Not only should case resolution statistics overall be broken down by priority level but, the priority levels themselves need to be examined against a variety of variables available in L2K -- case category, profession, respondent information, source/patient information, state region, investigator, caseload , etc.

Review Scope & Methodology. The general scope of this review will be to refine the current case management system by developing a case evaluation system based upon seriousness (priority) and complexity ("acuity"). The system will be rooted in the empirical determination and scaling of factors that are deemed to be important relating to the seriousness and complexity of cases. The study will draw on review of relevant management and policy literature, the experiences of other states, on the results of the Sanction Reference Study's findings, and on the empirical analysis of DHP's data. The Enforcement Committee will be updated on the initial findings in April and determine if further work should proceed, depending upon their interpretation of the analysis.

Board Discretion to Move Directly to Formal Hearings on Certain Priority 1 and 2 Cases

Prior to a change in law effective in 1997, health regulatory boards' informal conference committees had the discretion of sending cases they deemed serious enough directly to formal hearing. Now, except under summary suspension circumstances, boards must wait to take action until the respondent has had an opportunity to be heard before an informal/special conference committee. Prior to law change, informal conference committee orders had to be ratified by the full board;, so in effect, their actions had to wait until the board could meet (usually only quarterly). Beginning with the change, the informal conference committee became a "special" conference committee, whose orders became effective approximately a month afterwards. However, the special conference committee cannot suspend or revoke a license, themselves. The vast majority of cases have always been resolved without going to formal hearings.

Since it has been several years since the change in law, the current review seeks to determine the effect that may have occurred on case resolution time of those cases resulting in a suspension or revocation. Upon review of the results of the analysis in April, the Committee can determine if a full policy review is warranted.