

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 24, 2021

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Mr. Marchese called the meeting to order at 8:32 a.m.

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

MEMBERS PRESENT: L. Blanton Marchese, Vice-President
David Archer, MD, Secretary-Treasurer
James Arnold, DPM
Amanda Barner, MD
Manjit Dhillon, MD
Alvin Edwards, MDiv, PhD
Jane Hickey, JD
Jacob Miller, DO
Karen Ransone, MD
Brenda Stokes, MD
Joel Silverman, MD
Ryan Williams, MD
Martha Wingfield
Khalique Zahir, MD

MEMBERS ABSENT: Lori Conklin, MD, President
Madge Ellis, MD
Milly Rambhia, MD
Ray Tuck, DC

STAFF PRESENT: William L. Harp, MD - Executive Director
Jennifer L. Deschenes, JD - Deputy Executive Director for Discipline
Colanthia M. Opher - Deputy Executive Director for Administration
Michael Sobowale, LLM – Deputy Executive Director for Licensure
Barbara Matusiak, MD - Medical Review Coordinator
David Brown, DC – DHP Director
Elaine Yeatts – DHP Senior Policy Analyst
Erin Barrett, JD - Assistant Attorney General & Board Counsel

OTHERS PRESENT: Dora Muhammad, Virginia Interfaith Center

EMERGENCY EGRESS: Mr. Marchese provided the emergency egress procedures for Board Room 2.

INTRODUCTION OF NEW BOARD MEMBER

In her absence, Dr. Harp presented a brief bio on Madge Ellis, MD, the new MD from the 9th Congressional District.

APPROVAL OF THE OCTOBER 22, 2020 MINUTES

Dr. Edwards moved to approve the October 22, 2020 minutes as presented. The motion was properly seconded and carried unanimously.

ADOPTION OF THE AGENDA

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

PUBLIC COMMENT

Dora Muhammad, Congregation Engagement Director with the Virginia Interfaith Center for Public Policy, spoke in favor of the Board pursuing legislation to require continuing education in implicit bias.

REPORT OF THE DHP DIRECTOR -- David Brown, DC

Dr. Brown informed the participants that on June 30, 2021, when the declared state of emergency expires, the Board's authority to hold virtual meetings will cease along with any exceptions and exemptions to the licensing process. He advised that staff will be returning to the office in September, most likely with a hybrid schedule that allows teleworking and optional mask-wearing.

Dr. Brown also provided an overview of the Agency's efforts on diversity, equity and inclusion to include how an identified lack of diversity in leadership at DHP is being addressed. Dr. Brown also noted that DEI training will be included in future Board member orientations.

On behalf of Dr. Allison-Bryan, Dr. Brown presented a quick update on COVID-19 vaccinations in Virginia.

REPORTS OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

No report.

VICE-PRESIDENT

Mr. Marchese had no report

SECRETARY-TREASURER

Dr. Archer had no report.

EXECUTIVE DIRECTOR

Dr. Harp provided an update on the following items:

- 1- Board Cash Balance as of April 30, 2021 – Dr. Harp reminded the members that this is the third cycle of reduced renewal fees intended to bring the cash reserves into line with the law.
- 2- YTD Revenue and Expenditures – Dr. Harp stated that spending is within expectations for the year to date.
- 3- Electronic Meetings – 33 virtual meetings have been held so far. In-person meetings will resume in July.
- 4- Update on Opioid Waiver Requests – To date, the Board has received over 2,100 requests. The law allows a one-time waiver of 12 months for a prescriber; there is no extension past 12 months. The Board has the authority to grant waivers past the July 1, 2021, as long as it is a first waiver.
- 5- Letter to FSMB re: Physician Assistant Interstate Compact – The letter to FSMB included comments on the definition of “current significant investigative information”, criminal background checks, joint investigations, and as yet unknown fees for boards and licensees.
- 6- FSMB John H. Clark, MD Leadership Award – Dr. O’Connor was nominated for the award based on his leadership at the state board level, including his work with telemedicine, licensure, and the opioid regulations. He was awarded this honor at the FSMB Annual Meeting in April.
- 7- Board Members with Terms Expiring – The terms of Dr. Conklin, Dr. Tuck, Mr. Marchese, and Martha Wingfield expire June 30, 2021. Ms. Wingfield will not be seeking a second term.

COMMITTEE AND ADVISORY BOARD REPORTS

Dr. Edwards moved to accept all the minutes en bloc. The motion was properly seconded and carried unanimously.

OTHER REPORTS

Board Counsel

Ms. Barrett provided an update to the members on the following litigation:

Merchia v. Board of Medicine et al.
Moustafa v. Board of Medicine

Hill v. Board of Medicine

Garada v. Board of Medicine

Zackrison v. Ali et al.

Board of Health Professions (BHP)

This report was for informational purposes only.

Podiatry Report

Dr. Arnold had no report.

Chiropractic Report

No report.

Committee of the Joint Boards of Nursing and Medicine

Dr. Ransone mentioned the work being done by the Joint Boards, including HB1737, which reduces the number of years of clinical experience to qualify for autonomous practice from 5 to 2.

Report of the 2020 Physician Workforce Survey

Dr. Shobo presented the trends in the physician workforce including age, gender, the shifting gender and age distribution, median debt, income and retirement intentions. Several Board members asked questions that Dr. Shobo will research and provide responses to at the next meeting of the full Board.

Break

Mr. Marchese called for a recess at 9:41a.m.; the meeting reconvened at 9:53 a.m.

NEW BUSINESS:

1. Regulatory and Legislative Issues

Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of regulatory actions as of June 14, 2021. This report was for informational purposes only and did not require action.

Regulatory/Policy Actions – 2021 General Assembly

Ms. Yeatts did a quick review of legislation from the 2021 Session and the actions that the Board needs to take.

2. Regulatory Action – Final Rules for Prohibition on Practice of Conversion Therapy

Ms. Yeatts advised that the final regulations are identical to the proposed regulations, and that identical regulations for Nurse Practitioners were adopted by the Board of Nursing on May 18th.

MOTION: Dr. Edwards moved to adopt the final regulations to amend 18VAC85-20 (Medicine) and 18VAC90-30 (Nurse Practitioners) as presented. The motion was properly seconded and passed unanimously.

3. Adoption of Proposed Regulations for Surgical Assistant/Surgical Technologist Regulations

Ms. Yeatts referred to the Notice of Intended Regulatory Action (NOIRA) posted on Town Hall and the proposed regulations as recommended by the Advisory Board on Surgical Assisting. She noted no comments had been received on the NOIRA.

MOTION: After a brief discussion, Dr. Miller moved to adopt the proposed regulations as recommended by the Advisory Board. The motion was properly seconded and carried unanimously.

4. Exempt Regulatory Action – Genetic Counselors

Ms. Yeatts explained that in promulgating the regulations for the licensure of genetic counselors in 2014, the Board adopted 18VAC85-150-170(B) to implement the “conscience clause” that was included in the original legislation. Now that the Code Section containing the conscience clause has been repealed, this regulation can be repealed.

MOTION: After a brief discussion, Dr. Williams moved to delete 18VAC85-150-170(B). The motion was properly seconded and carried unanimously.

5. Exempt Regulatory Action – Certification of Surgical Technologists

Ms. Yeatts advised that this exemption was being presented as an exempt action to conform the regulations to changes in the statute.

MOTION: Dr. Dhillon moved to amend the regulations for surgical technologists to reflect the change from registration to certification. The motion was properly seconded and carried unanimously.

Dr. Archer asked if the training received as a surgical technologist was comparable to a formal training program. Ms. Yeatts stated that individuals who have practiced as a surgical technologist for at least six (6) months prior to July 1, 2021 can be grandfathered into licensure.

6. Exempt Regulatory Action – Physician Assistants

Ms. Yeatts advised the draft amendments are to conform 18VAC85-50 et seq. to changes in the Code. It was noted that a physician assistant can now have a practice agreement with one or more patient care team physicians. Further, she stated that new language in the Code reduces the level of vicarious liability for patient care team physicians and podiatrists. *“Service as part of a patient care team by a patient care team physician or patient care team podiatrist shall not by the existence of such service alone, establish or create vicarious liability for the actions or inactions of other team members.”*

MOTION: Dr. Arnold moved to adopt the amended regulation as an exempt action. The motion was properly seconded and carried unanimously.

7. Guidance Document – Revision of 85-10

Ms. Yeatts stated that in 2013-2014, a workgroup comprised of physicians and licensed midwives developed the original guidance document listing the high-risk conditions for which disclosure by a midwife is required. Guidance Document 85-10 was reviewed on May 17, 2021 by a newly established workgroup comprised of three Advisory Board on Midwifery members and three Board of Medicine members. Agreed-upon revisions are being presented for adoption.

Dr. Archer thanked the Advisory Board members for their contributions, noting that most of the work was accomplished by them prior to the May 17th meeting. He said that this document covers the risks to the mother and fetus and presents recommendations for continuing care by the midwife, or for referral to another practitioner.

MOTION: Dr. Miller moved to approve the revisions to Guidance Document 85-10 as recommended by the workgroup and the Advisory Board on Midwifery. The motion was properly seconded and carried unanimously.

8. Request from Virginia Society of Eye Physicians and Surgeons (VSEPS) & Virginia Ambulatory Surgery Association (VASA)

Dr. Harp led the members through the communications received from representatives of both entities. He explained the reasoning behind the Legislative Committee’s recommendation to decline the formation of a workgroup.

After a brief discussion, the members were in agreement that enough authority exists in the current law and regulations to hold practitioners to an appropriate standard of care in any setting.

MOTION: Dr. Miller moved to accept the recommendation of the Legislative Committee not to establish a workgroup to set a single standard of care for ophthalmologic and other surgeries. The motion was properly seconded and carried unanimously.

9. Request for a Guidance Document on Benzodiazepines

Dr. Silverman provided an overview of this topic as discussed at the May 21, 2021 Legislative Committee meeting. He stated that Dr. Granoff was a proponent for the use of benzodiazepines and had voiced concern that physicians have become reluctant to prescribe them. The Legislative Committee members established that there are no restrictions in the current law and regulations that prohibit practitioners from prescribing benzodiazepines based on a patient's need. Therefore, the determination by the Committee was not to recommend the development of a guidance document.

MOTION: Dr. Miller moved to accept the recommendation of the Legislative Committee not to develop a guidance document on benzodiazepines. The motion was properly seconded and carried unanimously.

10. Request from the Virginia Interfaith Center for Public Policy

Mr. Marchese reminded the members of public comment from Ms. Muhammad received at the top of the meeting and then provided an overview of the discussion at the Legislative Committee meeting. He also reminded the members that the Board is limited in its authority to require continuing education requirements.

MOTION: Dr. Brown suggested the Board consider legislation that would authorize the Board of Medicine to require 2 hours of education on a topic each biennium for renewal. The first required topic could be implicit bias. After further discussion, Dr. Miller moved to have a concise and objective packet on implicit bias placed in the Board Briefs. The motion was properly seconded and carried unanimously.

MOTION: Dr. Stokes then moved for the staff to seek statutory authority similar to that of the Board of Pharmacy, whereby the Board of Medicine could designate 2 hours of CE in place of the current opioid CE requirement. The Board acknowledged Dr. Archer's concern about mandating specific educational hours. With no additional discussion, the motion was seconded and passed with one member opposing.

MOTION: After discussing how to incentivize practitioners to take advantage of educational courses, Dr. Arnold moved to grant Type 1 hours for certain implicit bias training courses identified in the Board briefs. The motion was properly seconded and carried.

BREAK: Mr. Marchese called for a break at 11:24 a.m.; the meeting reconvened at 11:37 a.m.

11. Impacting Continuity of Care by Additions to Guidance Document 85-12 on Telemedicine

Dr. Harp reminded the Board that the patient's location is considered to be the site of practice. Virginia has always required that an out-of-state practitioner hold a full license in order to treat Virginia residents via telemedicine. During the pandemic, out-of-state practitioners were authorized to follow Virginia residents by telemedicine with whom there was already an established practitioner-patient relationship. With the upcoming expiration of Executive Order 57, the Board is fielding questions as to what happens in regards to telemedicine follow-up with Virginia patients.

Dr. Harp then presented a draft copy of a new **Section Five: Electronic Medical Services That Do Not Require License** for incorporation into Guidance Document 85-12 on Telemedicine.

During the discussion, the members agreed that clarification would be beneficial and accepted the recommended changes with the exception of the COVID-19 language. With no further dialogue, Dr. Ransone moved to accept the draft language as amended. The motion was seconded and passed unanimously.

12. Licensing Report

Mr. Sobowale provided an update on the licensing trends and asked the Board to consider updating Guidance Document 85-9, Policy on the allowed number of USMLE Attempts. FSMB and NBME have decreased the number of attempts at each Step from six to four.

MOTION: Dr. Miller moved to refer this to the Credentials Committee. The motion was properly seconded and passed unanimously.

13. Discipline Report

Ms. Deschenes provided a brief report on the status of cases. She noted that the rate of the Board's disciplinary activity has remained consistent in spite of limitations brought on by COVID-19.

14. Meetings for 2022

Mr. Marchese encouraged everyone to check their calendars to ensure their availability for the 2022 meetings and to forward any questions or concerns to Ms. Opher.

15. Presentation of Plaques

Mr. Marchese read the inscriptions for the service plaques of Dr. Conklin, Dr. Tuck and Ms. Wingfield. By a round of applause, the members and staff thanked them for their service to the Board and the Commonwealth.

16. Report of the Nominating Committee

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

- Blanton Marchese – President
- David Archer, MD – Vice-President
- Alvin Edwards, MDiv, PhD – Secretary-Treasurer

From the floor, Dr. Williams nominated Amanda Barner, MD for the office of Secretary-Treasurer. Dr. Edwards graciously withdrew his name, and the Board unanimously accepted the amended slate.

17. Passing of the Gavel

18. Adjournment

With no other business to discuss, the meeting adjourned at approximately 12:34 p.m.

Blanton Marchese
Vice-President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary