

**VIRGINIA BOARD OF HEALTH PROFESSIONS
ENFORCEMENT COMMITTEE
APRIL 18, 2006**

TIME AND PLACE: The meeting was called to order at 10:45 a.m. on Tuesday, April 18, 2006 at the Department of Health Professions, 6603 W. Broad St., 5th Floor, Room 1, Richmond, VA.

PRESIDING OFFICER: Harold Seigel, DDS, Chair

MEMBERS PRESENT: Lynne Cooper
David Hettler, O.D.
Juan Montero, MD
Demis Stewart
Natale Ward, L.P.C.

MEMBERS NOT PRESENT: Toni A. Aust, R.Ph.
Alan E. Mayer, Ex-Officio

STAFF PRESENT: Robert A. Nebiker, Agency Director
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Susan Stanbach, Statistical Analyst, DHP
Faye Lemon, Director of Enforcement
Carol Stamey, Administrative Assistant

APPROVAL OF MINUTES: On properly seconded motion by Dr. Hettler, the Committee voted unanimously to approve the minutes of the January 17, 2006 meeting as amended.

PUBLIC COMMENT: No public comment was presented.

UPDATE ON THE SANCTION REFERENCE STUDY: Mr. Kauder reported that the Board of Medicine's worksheets continue to be monitored for usage and reflect an eighty percent (80%) compliance rate for cases resolved through informal conference. The Board of Medicine will be considering expanding the use of worksheets to include case resolution through pre-hearing consent orders. He noted that it appeared that there were fewer informal conferences this past year than previously, most likely due to increased use of pre-hearing consent orders and confidential consent agreements. Additionally, Mr. Kauder stated that due to board member turnover, training on the use of the system had been requested by the Board of Medicine.

The Board of Dentistry adopted three offense-type worksheets: "Inability to Safely Practice," "Substandard Care," and "Business Practice and Advertising." They began implantation in July. It is anticipated that a report on compliance will be available at the July meeting of the Board of Health Professions.

The Board of Nursing has completed data analysis and has developed three worksheets for nurses and one worksheet for CNA's. The three nursing worksheets are entitled, "Inability to Safely Practice," "Standards of Care," and "Unlicensed Activity/Fraud." The CNA worksheet encompasses all CNA case types. The Board of Nursing anticipates training in May and implementation in June.

The results of the Board of Veterinary Medicine analysis will be presented at its May meeting with the focus being on that board's use of monetary penalties.

The Board of Pharmacy's implementation continues to be on hold until September. They have held off on implementation pending further experience by the other boards.

The remaining boards have caseloads that are too small in number to be able to apply multivariate quantitative analyses as was done for Medicine, Dentistry, Nursing, Veterinary Medicine, and Pharmacy. However, interviews can still be conducted with current and former board members and staff and each board can still be provided with summaries of past case sanctioning to use as reference. The Board of Funeral Directors and Embalmers will be the

BOARD MEMBER TRAINING

The need for new board member training as well as on-going training for all members continues to be an issue of concern. Ms. Lemon and Ms. Wingfield noted that training and discussions occur at board meetings concerning enforcement and adjudicative processes. But, additional training could be readily be implemented upon request. To assist in determining training and discussion needs, Ms. Lemon suggested that feedback come from board members regarding their impressions of the quality of disciplinary cases and any suggestion that they may have for areas of improvement.

On properly seconded motion by Ms. Stewart, the Committee voted unanimously that the Board of Health Professions recognizes the training efforts being made by the boards and urges the boards to ensure that each member receives adequate training on the ongoing activities of the Enforcement and Administrative Proceedings divisions and is adequately updated on the law by the Office of the Attorney General.

Ms. Lemon and Mr. Nebiker reported that 12 new agency positions will be provided to the Enforcement Division. This should enable the unit to better address the significantly increased caseload being experienced and expected to continue as a result of reporting requirements and a general increase in consumer awareness of the agency.

**CONSIDERATION OF UNIFORM
SANCTIONING FOR CERTAIN NON-
CLINICAL CASES ACROSS BOARDS:**

Dr. Carter apprised the Committee of the potential benefits of uniform sanctioning for minor disciplinary non-patient care related offenses across boards. She noted that various Priority D cases could be handled administratively, perhaps through agency subordinates, to enable processing in a timelier manner and to better free up resources for patient-care cases.

On properly seconded motion by Dr. Hettler, Dr. Carter and Mr. Kauder are to provide a report of sanctioning decisions across boards for non-clinical cases at the next meeting. Ms. Wingfield cautioned that the differences in board statutes and fees must be taken into consideration before recommending strict uniformity. Dr. Carter offered that the initial report be restricted to continuing education cases. After the Committee has had an opportunity to review those results, they may determine whether it would be useful to summarize other types of Priority D cases.

**UPDATE ON AGENCY
PERFORMANCE ON CASE
STANDARDS AND ACROSS CASE
PRIORITIES – STRATEGIC PLAN:**

Ms. Stanbach presented an update on the agency's disciplinary case standards. It was noted that it appeared the quarterly comparison was down; however, annual performance was up even with an increase in cases. Ms. Lemon noted an increase in the number of medical malpractice cases. A copy of the charts and tables on agency standards performance is incorporated into the minutes as Attachment 1.

**DHP CRIMINAL BACKGROUND
CHECK REVIEW:**

Dr. Carter updated the Committee on the progress of the criminal background check review. See her report in Appendix 2, "DHP Criminal History Check Review."

She reported that last summer's National Council of State Boards of Nursing's report, "Using Criminal Background Checks to Inform Licensure Decision Making," had prompted much discussion in the regulatory community and lead Mr. Nebiker to institute the Department's study. Since the last BHP review in 1997, there has been much change. Then only three boards of nursing required criminal background checks, now 26. Further multiple boards of medicine do now, as well. Further, since 1997, criminal background checks are required in Virginia as conditions of employment in a number of settings involving vulnerable clients, such as in day care centers and assisted living facilities.

Dr. Carter informed the Committee of greater ease in the logistics of obtaining valid fingerprint checks and the results. However, she cautioned that there are problems with database accuracy and completeness. Often disposition data is not available for months, if then, and there are many mitigating and ameliorating factors that may come into play for any individual. Thus, Boards could not rely exclusively upon the database information to determine whether someone was eligible for licensure. Enforcement would need to conduct actual investigations and the boards would still

need to make determinations on a case-by-case basis.

She noted that many states and professions are grappling with the issues. Dialog on the issues is being sought at a roundtable discussion at the annual Council on Licensure Enforcement and Regulation (CLEAR) meeting in September.

Mr. Nebiker noted that the agency should be proactive in its review of this issue; however, it must keep costs in mind and the impact on access to healthcare.

Kate Nosbisch presented an overview of the agenda for the CLEAR annual meeting. The theme is "Expect the Unexpected: Are We Clearly Prepared?" Ms. Nosbisch's and Dr. Carter's proposal to CLEAR's Board for a roundtable discussion on criminal background checks was approved. The session will be held on the morning of September 15th and is entitled, "Criminal Background Checks Help You Avoid the Unexpected." The purpose of the roundtable discussion is to give agency representatives from across the country an opportunity to showcase best policies and procedures for conducting background checks as a condition of licensure or as part of a disciplinary investigation. The policy information gleaned from this meeting will be incorporated into the study report which will be shared with BHP in the fall.

NEW BUSINESS:

Dr. Seigel brought up a concern over the License Lookup feature that shows a red underlined "Yes" when additional public (i.e., disciplinary) information is available on the practitioner. He stated that the color red connoted seriousness, when, in fact, the discipline may be minor. No action was taken.

ADJOURNMENT:

On properly seconded motion by Dr. Hettler, the Committee adjourned at 12:20 p.m.

Harold S. Seigel, D.D.S., Chair

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