

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

October 17, 2019

Department of Health Professions

Henrico, VA 23233

- CALL TO ORDER:** Dr. Tuck called the meeting to order at 8:35 AM.
- ROLL CALL:** Ms. Opher called the roll; a quorum was established.
- MEMBERS PRESENT:** Ray Tuck, DC, President
Lori Conklin, MD, Vice-President
L. Blanton Marchese, Secretary-Treasurer
Syed Ali, MD
David Archer, MD
James Arnold, DPM
Manjit Dhillon, MD
Alvin Edwards, MDiv, PhD
Jacob Miller, DO
Karen Ransone, MD
Joel Silverman, MD
Brenda Stokes, MD
Svinder Toor, MD
Kevin O'Connor, MD
Kenneth Walker, MD
Martha Wingfield
- MEMBERS ABSENT:** David Giammittorio, MD
Jane Hickey, JD
- 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
Barbara Matusiak, MD - Medical Review Coordinator
Cheryl Clay - Administrative Assistant
Tearia Davis - Administrative Assistant
David Brown, DC - DHP Agency Director
Elaine Yeatts - DHP Senior Policy Analyst
Erin Barrett, JD - Assistant Attorney General
- OTHERS PRESENT:** Scott Johnson, JD-HDJN & MSV
Josh Hetzler-Family Foundation
Adam Trimmer-Born Perfect
Paulette Trimmer
Casey Pick-Trevor Project
Tom Intorcio-Virginia Catholic Conference
Kristen Ogden-Families for Intractable Pain Relief

EMERGENCY EGRESS

Dr. Conklin provided the emergency egress procedures for Conference Room 2 and instructions for the Great Southeast Earthquake Drill.

APPROVAL OF THE JUNE 13, 2019 MINUTES

Dr. Miller moved to approve the minutes as presented; the motion was properly seconded and carried unanimously.

ADOPTION OF THE AGENDA

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

INTRODUCTION OF NEW BOARD MEMBER

Dr. Tuck invited Joel Silverman, MD, Medicine and Surgery appointee from the 7th Congressional District, to introduce himself to the Board. Dr. Silverman gave a brief overview of his professional career, and all welcomed him.

PRESCRIPTION MONITORING PROGRAM PRESENTATION (PMP) – Ashley Carter, Senior Deputy Director, PMP

Ms. Carter presented the highlights from the PMP Annual Report. Her presentation covered which drugs are reported, who must report, exemptions to reporting, and who has access to the PMP data. She advised the members that, in addition to many states and territories, the Virginia PMP is now interoperable with the Department of Defense Military Health System. Ms. Carter also stated that, beginning July 1, 2020, any prescription containing an opioid must be transmitted electronically by the prescriber to the dispenser. Additionally, she reminded the Board that in 2016, a shift in PMP's role occurred when Code of Virginia §54.1-2523.1 was updated to say "Develop, in consultation with the PMP Advisory Panel, "criteria for *indicators of unusual patterns of prescribing or dispensing of covered substances...*and a method for analysis of data collected by the PMP". So the PMP is now proactive in the generation of reports for investigation.

After her presentation Ms. Carter fielded Board member questions, including how the PMP identifies practitioners that may be overprescribing.

Dr. Brown commented that efforts have been made to ensure that identifying unusual patterns does not look like a witch hunt, and let the practitioner do his job. He added that the process uses several criteria and tries to ensure that it remains focused, such that not too broad a net is cast. One of the safeguards is the Board of Medicine and Board of Pharmacy members on the Advisory Panel that is tasked with setting the thresholds for the identification of unusual patterns. He suggested that Board members review all the data in the Annual Report and send any concerns to the Advisory Panel via their board representative. Dr. Brown said what we do not want is to have a practitioner decide to stop prescribing opioids due to fear of investigation.

Dr. Archer suggested that the Board consistently reinforce that to practitioners.

PUBLIC COMMENT ON AGENDA ITEMS

Dr. Tuck opened the floor for public comment, allowing three minutes of time for each speaker.

Josh Hetzler – Legislative Counsel with the Virginia Family Foundation

He asked the Board to consider the harm that banning conversion therapy might cause.

Adam Trimmer – Ambassador for Born Perfect

He gave his personal account of being a survivor of conversion therapy, stating that the practice leaves an everlasting negative impact on a person.

Paulette Trimmer

She spoke against conversion therapy, noting that it is harmful.

Casey Pick – Trevor Project

Casey spoke to the legal status of conversion therapy, the prohibitions that have been upheld by courts, and urged the Board to end conversion therapy.

Tom Intorcio – Virginia Catholic Conference

He spoke in opposition to banning conversion therapy. He asked how individuals that participate in voluntary conversations about gender issues will be scrutinized, and if regulations are implemented, would the ban usurp parental rights?

Kristen Ogden –Families for Intractable Pain Relief

She asked the Board to consider the impact that the current opioid regulations have on patients with intractable pain and no history of drug diversion.

DHP DIRECTOR'S REPORT- David Brown, DC

Dr. Brown said that the board member training held on October 7th was a success, and the post-training survey rated the day as a 4.7 out of 5. He thanked Ms. Barrett for her presentation and said that a link to all the presentations has been provided for the board members who were unable to attend the session.

Dr. Brown reported on the latest security enhancements for those visiting the agency. He noted that anyone who does not have a badge will need to sign in and wear a visitor sticker. He noted that, in the near future, other measures will be put in place, including a metal detector at the front entrance.

Dr. Brown also provided an overview of two DHP workgroups:

- Workgroup on Barriers to Licensure for International Medical Graduates (IMGs) led by Dr. Allison-Bryan – Dr. Brown said that Virginia already does a good job of welcoming IMGs. In 2017, the General Assembly reduced the 2-year postgraduate requirement to 1 year. He said that one of the recommendations from the study will be to consider a pathway that Canada has for IMGs and determine the feasibility of its implementation in Virginia.

- Workgroup on Telemedicine led by Dr. Brown – The General Assembly considered two bills that would have redefined the site of patient care. They would have established the location of the physician as the site of patient care. The physician would only be required to hold a license in the state from which he/she practiced. The concern is that if the telemedicine practitioner does not hold a Virginia license, and there is a complaint on behalf of a Virginia patient, the Board of Medicine would not have jurisdiction. To address this concern, a couple of the recommendations were made:
 1. The Board of Medicine take another look at the Interstate Medical Licensing Compact and determine if there are advantages to signing on.
 2. Establish reciprocity agreements with other states.

Dr. Brown noted that the full report will be posted on the DHP website soon.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

Dr. Tuck reported on his attendance at the National Board of Chiropractic Examiners Workgroup. The group is evaluating/revising the testing process to better ensure that those admitted to the profession are competent and safe to practice on the public.

At Dr. Tuck's request, Dr. Walker spoke to the Board members about the ways they could serve in positions with the Federation of State Medical Boards.

VICE-PRESIDENT'S REPORT

Dr. Conklin reported on her attendance at the Tri-Regulators Symposium in Frisco, TX. She said that it was good to see how three groups of healthcare professionals (Medicine, Nursing, Pharmacy) are trying to work together to improve patient care, reduce overdoses, etc. The principle of a professional being able to practice to the limits of his/her training was paramount. Additionally, she attended a session on Artificial Intelligence (AI) that outlined the services AI can perform and how it differs from traditional approaches. Is it better? She also noted that licensure compacts were an area of interest.

SECRETARY-TREASURER'S REPORT

Mr. Marchese reported on his attendance at the Tri-Regulators Symposium. He said that, in such a team-based collaborative effort, he was fortunate to spend time with DHP colleagues Caroline Juran from the Board of Pharmacy and Jay Douglas from the Board of Nursing. He also mentioned risk-based regulation and that regulatory opportunities may be possible with AI.

EXECUTIVE DIRECTOR'S REPORT

Cash Balance

Dr. Harp briefly reviewed Medicine's cash balance which was down approximately \$400,000 from June 2019. He noted this is the direction that the cash balance should be going to gain compliance with the

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Callahan Act. He said the diminution of the Board's cash reserves is largely due to the reduction in renewal fees for the last 3 biennia.

Allocated Cost for Enforcement Services – FY2019

Dr. Harp shared with the Board that Medicine provides 26.8% of the funding for the Enforcement Division, making it the highest utilizer of investigative time.

Veterans Administration Proposed Regulations

Dr. Harp said that, at its August 2nd meeting, the Executive Committee discussed the Veterans Administration (VA) proposal for revising its regulations on telemedicine and telehealth. The issue at hand with the revision is the use of trainees to provide care remotely. The Executive Committee reasoned that PGY-1's were not yet ready for independent practice and determined that its response should be that PGY-2's and above be utilized for telemedicine. Dr. Harp noted his reply to Dr. Galpin.

Dr. Harp also reported that the Federation of State Medical Boards forwarded a request for comment on the U.S. Department of Health and Human Services (HHS) proposed use of state medical board orders to identify providers that it may wish to prohibit from providing care to Medicare and Medicaid recipients. After communication with the officers of the Board, it was decided that Virginia's Orders speak for themselves, and that it is not the role of the Board to defend any particular licensee from HHS policy. HHS will have access to the Board's Orders and can stratify their responses accordingly. The Board agreed that it was not necessary to respond to this inquiry.

Letter from the Washington Medical Commission

Dr. Harp referred to the letter from the Washington Medical Commission (WMC) that seeks to clarify its current opioid prescribing rules for its licensees. Apparently, the WMC has received reports from patients on chronic opioid therapy whose opioids have been rapidly tapered or discontinued. Dr. Harp said that this parallels the experience in Virginia that led the Ad Hoc Committee on Opioid Continuing Education to select the Stanford tapering course as part of the opioid education package for 2019-2020. Dr. Harp asked for any other suggestions about what Virginia should do at this time; there were none.

FSMB Advocacy Report

Dr. Harp referred to the Federation of State Medical Board's Advocacy Network News publication that provides information on what is happening legislatively on the healthcare front in Washington, DC. A few of the topics were:

- Telehealth
- Legislation introduced by Veterans Affairs
- Background checks
- Opioids
- Marijuana
- Stem cells

Interstate Medical Licensure Compact

Dr. Harp mentioned the Interstate Medical Licensure Compact data released in April indicated it was taking about 56 days from the beginning of the process to issuance of a license. There are 29 states in the Compact; to date, it has issued over 5,000 licenses.

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Dr. Harp reminded the Board that, in 2016, the decision was not to join the Compact at that time, but rather to develop a license by endorsement pathway. The thought was that licensure by endorsement could rival or exceed the Compact in speed and be less costly to the applicant and the Board.

The meeting broke at 10:15 a.m. All were reminded of the Great Southeast Shake Out that would occur at 10:17 a.m.

The meeting reconvened at 10:32 a.m.

COMMITTEE and ADVISORY BOARD REPORTS

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

OTHER REPORTS

Board Counsel

Erin Barrett, AAG provided an update on the status of the following cases:

- Clowdis vs. the Virginia Board of Medicine
- Merchia vs. the Virginia Board of Medicine
- Moustafa vs. the Virginia Board of Medicine
- Hill vs. the Virginia Board of Medicine

Board of Health Professions

Dr. O'Connor informed the members that the Board of Health Profession's recommendation was to license music therapists under the Board of Counseling.

Podiatry Report

Dr. Arnold had no report.

Chiropractic Report

Dr. Tuck had no report.

Committee of the Joint Boards of Nursing and Medicine

Dr. O'Connor and Dr. Walker reported that the most recent meeting of the Committee heard about the licensing process for nurse practitioners seeking autonomous practice.

New Business:

1) Regulatory and Legislative Issues

- **Chart of Regulatory Actions**

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Ms. Yeatts provided an update on the status of regulatory actions as of October 2, 2019. This report was for informational purposes only and did not require action.

- **Amendment to Fee for Returned Checks**

Ms. Yeatts explained that a finding of a recent audit by the Office of the Comptroller indicated that DHP should be charging \$50.00 for a returned check rather than the current \$35.00. Counsel for DHP advised that the fee of \$50.00 is in Virginia Code 2.2-4805(B). Code Section 2.2-614.1 states that a “penalty of \$35.00 or the amount of any costs, **whichever is greater** shall be added to the amount of the invalid check.

MOTION: After a brief discussion, Dr. O’Connor moved to accept the recommendation that all of the Board’s regulations for medicine and nurse practitioners be amended to reflect the higher “handling” fee of \$50.00. The motion was properly seconded and carried unanimously.

- **Recommendation of Retiree License**

Ms. Yeatts reviewed legislation passed by the 2019 General Assembly to add §54.1-2937.1 – Retiree license - and the discussion by the Executive Committee of a Notice of Intended Regulatory Action (NOIRA).

Ms. Yeatts pointed out that the Board already has a restricted volunteer license that allows a licensee to practice in a free clinic without compensation and with malpractice coverage through §54.1-106. However, the retiree license would allow the holder to provide care in a patient’s home with the option of charging for services. The licensee would not be required to carry malpractice insurance.

Ms. Yeatts also advised that members of the Executive Committee voiced concerns over the possible confusion between the two licenses, whether or not a licensee could hold both licenses at the same time, what is the definition of “retired”, and whether a 35-year-old physician could “retire” and practice solely on a retiree license for years.

After discussion, the Board agreed that it understood the intent of the law; however, it thought there was still some work that needed to be done before moving forward with a NOIRA.

MOTION: No action taken.

- **Adoption of Regulations for Waiver of Electronic Prescribing by Emergency Action – Nurse Practitioners**

Ms. Yeatts referred to a copy of the proposed draft amendments to the prescriptive authority regulations for nurse practitioners to comply with §54.1-3408.02 which requires electronic prescribing for opioids beginning July 1, 2020. In accordance with the Code under **Transmission of prescriptions (D)**. *The licensing health regulatory board of a prescriber may grant such prescriber, in accordance with the regulations adopted by such board, a waiver of the requirements of subsection B, for a period not to exceed one year, due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber.*

Ms. Yeatts advised that the enactment clause on HB2559 requires adoption of regulations within 280 days, so the Board must amend by emergency action. Additionally, she pointed out that the Executive Committee adopted identical language for prescribers licensed by the Board of Medicine, and that the Board of Nursing

adopted the same amendments for nurse practitioners on September 17, 2019.

MOTION: Dr. O'Connor moved to adopt the emergency regulations and a Notice of Intended Regulatory Action (NOIRA) to replace the emergency regulations. The motion was properly seconded and carried unanimously.

- **Regulatory Action – Prescriptive Authority**

Ms. Yeatts referred to a copy of the proposed draft amendments submitted by the Board of Nursing on the elimination of the separate license for prescriptive authority and the applicable section of the Code.

She noted that prescriptive authority will be attached to the nurse practitioner license and addressed in the practice agreement. The initial fee for prescriptive authority will be reduced, and the requirement to renew will be eliminated. The Board of Nursing will be adopting the final version of these regulations at its November business meeting.

MOTION: Dr. Edwards moved to adopt the proposed amendments as drafted. The motion was properly seconded and carried unanimously.

2. Recommendation on Conversion Therapy

For the Board's review and consideration, Ms. Yeatts provided a copy of the minutes of the Conversion Therapy Workgroup convened by DHP on October 5, 2018, statements from applicable medical societies/associations, SAMSHA's report on "Ending Conversion Therapy – Supporting and Affirming LGBTQ Youth", and a draft of a proposed guidance document.

Ms. Yeatts noted that the 2018 Workgroup heard testimony from the public, reviewed relevant documents, and discussed the issue at length. In the end, it was determined that each of the regulatory boards would decide whether to develop a guidance document and/or to promulgate regulations addressing the issue of conversion therapy. She also pointed out that the Legislative Committee voted to recommend adoption of a guidance document and initiate rulemaking by adoption of a Notice of Intended Regulatory Action (NOIRA).

MOTION: Dr. O'Connor moved to accept the recommendation of the Legislative Committee. The motion was properly seconded.

Dr. Tuck opened the floor for discussion.

Dr. Miller asked whether this guidance document would apply to individuals of all ages or just to minors?

Ms. Yeatts said that it only applied to minors.

Dr. Archer asked who was doing the counseling. Was it a MD, NP, or a layperson?

Ms. Yeatts was unable to confirm the providers, but noted that the guidance document would apply to licensees of the Board of Medicine.

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Dr. Archer said there is a lot of interest in gender change. One of the ongoing debates is whether therapy and counseling are the same thing.

MOTION: Dr. Ransone asked to amend the motion on the table by changing the word counseling to therapy. The amendment was seconded.

During the discussion, Ms. Yeatts stated that counseling is being used as a generic term. Dr. Toor said that, in his opinion, therapy is active intervention, whereas counseling is conversation without recommendation.

Dr. Ransone withdrew her amendment.

The members continued to discuss the differences between counseling and therapy. Ms. Barrett suggested that the guidance document be amended to include “counseling or therapy.”

Dr. Archer remarked that counseling is a positive interaction, whereas “conversion therapy” is a different kind of activity and is not counseling.

Dr. Conklin stated that all these concerns were discussed by the Legislative Committee taking into account what professions were under the Board’s jurisdiction.. She said that no one had come before the Board with a complaint of performing conversion therapy. She acknowledged that minors may have a problem filing a complaint, but the Board cannot regulate a layperson.

Dr. Ali said that the language is a carve-out and that we are not restricting our licensees for inadvertently assisting those seeking help on gender issues/transition. He is in favor of including the “or”.

Dr. O’Connor pointed out again that we can only regulate those under the Board’s jurisdiction. If a lay person is the one doing harm in these practices, it is outside our jurisdiction.

Dr. Harp stated that conversion therapy is the negative in the language of the guidance document, and the “not” turns the language that follows into conduct that is positive and not prohibited.

Dr. Archer felt that the sentence structure was challenging.

Dr. Ransone called the question.

Ms. Yeatts asked for clarification and whether the document should state “if under the age 18” or “all”. She noted that the other Boards used “all”.

MOTION: Dr. O’Connor amended his original motion to include the language “age 18 and under.” The amended motion was properly seconded.

After some discussion, the consensus was there should be no distinction by age. The amended motion failed, but the original motion carried unanimously.

3. Consideration of Guidance Document for Nurse Practitioners

Ms. Yeatts advised that the Committee of the Joint Boards reviewed Guidance Document 90-53 – Treatment by Women’s Health Nurse Practitioners of Male Clients for Sexually Transmitted Diseases - that was

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approved by the Board of Medicine in February 2019. As there were some questions, the document was not considered by the Board of Nursing in March. However, the Committee of the Joint Boards again considered the document yesterday, October 16th, and is recommending it to the Board for consideration.

MOTION: Dr. Edwards moved to adopt Guidance Document 90-53 as recommended by the Committee of the Joint Boards. The motion was properly seconded and carried unanimously.

4. Audit of Practitioners Performing MDR – Dr. Harp

Dr. Harp noted that in 2018, an audit was conducted on 61 practitioners that indicated they mixed, diluted or reconstituted drugs for administration in their practice. He pointed out the articles in the Board Briefs providing advance notice of the audits in 2011 & 2018, the audit tool used to determine compliance, the results of the audit, and resolution options for non-compliant licensees.

Dr. Harp also noted that the Legislative Committee recommended sending advisory letters to all those who were non-complaint with one or more requirements of the regulations.

MOTION: Dr. Ransone moved to accept the recommendation of the Legislative Committee. The motion was properly seconded.

Mr. Marchese questioned if those that were non-compliant with second checks had the staff to do so.

Dr. Ali stated MDR is a longstanding issue, and the update to USP Chapter 797 on sterile compounding is currently on hold.

Dr. Brown stated that it would be appropriate to send out letters prior to the USP Chapter 797 becoming final. Another communication could be sent to licensees after the revisions are finalized.

After brief discussion, the motion on the floor to send advisory letters to the 30 licensees found to be non-compliant carried unanimously.

5. Licensing Report - Update on Licensure by Endorsement – Ms. Opher

Ms. Opher advised that as of October 17th, the total number of licensees was 72,827 and of that number, 39,060 were licensed in medicine and surgery.

Ms. Opher said that since January 1st, the Board has issued 2,092 medicine and surgery licenses, of which 192 were obtained through the endorsement pathway. She reported that the average time has been approximately 52 days from receipt of the application to issuance of the license number. She said the time from receipt of the last piece of supporting documentation to review and approval takes less than 5 work days.

6. Discipline Report

Ms. Deschenes introduced James Schliessmann who presented a possible summary suspension on Dr. BK.

Dr. Ransone moved to summarily suspend. The motion was seconded and carried unanimously.

7. Finance Presentation on Submitting Travel Vouchers – Dr. Harp

In the interest of time, Dr. Harp advised that staff will send a reminder email to Board members regarding the 30-day timeframe for submission and instructions on how to create a digital signature.

8. Announcements – Amended 2020 Meeting Dates and Reminders Page

Ms. Opher advised that the calendar previously presented to the Board for consideration noted the next meeting of the Full Board as February 20-21; however, it should have been February 20-22.

Travel vouchers for today’s meeting should be submitted no later than November 18, 2019.

9. Adjournment

With no other business to discuss, Dr. Tuck adjourned the meeting of the Full Board at approximately 11:49 AM.

Ray Tuck, Jr., DC
President, Chair

William L. Harp, MD
Executive Director

Colanithia Morton Opher
Recording Secretary