

VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES

Friday, May 17, 2019

Department of Health Professions

Henrico, VA

CALL TO ORDER: The meeting of the Legislative Committee convened at 8:34 a.m.

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

MEMBERS PRESENT: Ray Tuck, DC, Vice-President, Chair
David Giammittorio, MD
Jane Hickey, JD
Karen Ransone, MD
David Taminger, MD
Svinder Toor, MD

MEMBERS ABSENT: Alvin Edwards, PhD

STAFF PRESENT: William L. Harp, MD, Executive Director
Barbara Matusiak, MD, Medical Review Coordinator
Colanithia Morton Opher, Deputy Director for Administration
David Brown, DC, DHP Director
Barbara Allison-Bryan, MD, DHP Chief Deputy
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: W. Scott Johnson, Esq., MSV
Richard Grossman, VCNP

EMERGENCY EGRESS INSTRUCTIONS

Dr. Ransone provided the emergency egress instructions.

APPROVAL OF MINUTES OF SEPTEMBER 7, 2018

Dr. Ransone moved to approve the meeting minutes of September 7, 2018 as presented. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

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

PUBLIC COMMENT

There was no public comment

DHP DIRECTOR'S REPORT

David Brown, DC, DHP Agency Director, advised the Committee that DHP's website has a new look. The pilot for the new site began with the Board of Nursing, and by year's end, the remaining boards will migrate over to the new format. He said the new format will make it easier for the external stakeholders to navigate, which in turn, should decrease the number of phone calls to the boards.

Dr. Brown then provided an update on the Board of Pharmacy's cannabidiol oil and THC-A processing program. He noted that Pharmacy has approved five processors, one for each health district. By the end of 2019, they are to be up and running. Dr. Brown spoke to the CBD oil that is currently available at a number of retail outlets. He said that for the last couple of years, federal farm bills have supported market research, including cultivating hemp for fiber or bio fuel. Hemp is also now being used as a source for CBD oil. Virginia farmers are not currently allowed to grow hemp or produce CBD oil. A bill will be introduced next year in the General Assembly to align Virginia law with federal law. It will provide for the Secretary of Agriculture to develop a regulatory scheme for hemp and hemp products in the Commonwealth. Dr. Brown also pointed out that the CBD oil currently being sold at retail stores is hemp-derived and unregulated, so products may contain contaminants and pesticides. Once the CDC became aware of contaminated oil and its effect on those who used the oil, it issued an advisory notification.

Dr. Allison-Bryan advised that some studies show that up to 70% of available CBD oil is mislabeled.

Dr. Toor asked if CBD oil is already being produced by a pharmaceutical company, why is the Board of Pharmacy proceeding with an alternative process?

Dr. Allison-Bryan stated that before Epidiolex was approved, the General Assembly was interested in going forward with a Board of Pharmacy oil processing program.

Dr. Brown noted that Dr. Toor makes a good point; however, it is not up to DHP to change the program, that would be the prerogative of the General Assembly. There has been a significant amount of money invested in the program already, and an effort to change its current structure would probably meet a lot of resistance.

As an aside, Dr. Allison-Bryan said that Virginia-produced CBD oil will not be covered by insurance, because it is still illegal under federal law.

Dr. Brown then advised that the 2019 Session requires DHP to convene two workgroups to study 1) access to telemedicine, including changing the definition, and 2) the licensure process and what barriers exist for foreign trained physicians.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp informed the members that we now have five months of experience with Licensure by Endorsement, and we are still ironing out the process. The Interstate Medical Licensure Compact reports their applicants are being licensed in an average of 36 days. He said the Board should be able to meet that standard. The Compact reports 32% of its participants get licensed within 15 days.

NEW BUSINESS

1. Regulatory/Policy Actions from the 2019 General Assembly

Dr. Harp briefed the members on the status of the following regulations and actions:

EMERGENCY REGULATIONS:

Legislative source	Mandate	Promulgating agency	Board adoption date	Effective date Within 280 days of enactment
HB1952	Patient care team – PAs	Medicine	6/13/19 or 8/2/19 (signed 2/22)	11/25/19
HB2559	Waiver for electronic prescribing	Medicine	6/13/19 or 8/2/19 (signed 3/21)	12/24/19

APA REGULATORY ACTIONS

Legislative source	Mandate	Promulgating agency	Adoption date	Effective date
HB2457	Retiree license	Medicine	NOIRA – 6/13/19	?

NON-REGULATORY ACTIONS

Legislative source	Affected agency	Action needed	Due date
HB1970	Department	Review of telehealth; practice by adjacent physicians	11/1/19
HB2169	Medicine	Review/revision of application content & process to identify & expedite military spouse apps	7/1/19
SB1557	Medicine/Pharmacy/Department	Inclusion of NPs and PAs for registration to issue certifications Participation in workgroup to study oversight organization	7/1/19
SB1760 (not passed)	Department (Medicine)	Study of Xrays in spas – VDH	11/1/19
HJ682 (not passed)	Department	Study of foreign-trained physicians to provide services in rural areas	11/1/19

Future Policy Actions:

HB793 (2018) - (2) the Department of Health Professions, by **November 1, 2020**, to report to the General Assembly a process by which nurse practitioners who practice without a practice agreement may be included in the online Practitioner Profile maintained by the Department of Health Professions; and (3) the Boards of Medicine and Nursing to report information related to the practice of nurse practitioners without a practice agreement that includes certain data, complaints and disciplinary actions, and recommended modifications to the provisions of this bill to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health and the Chairman of the Joint Commission on Health Care by **November 1, 2021**.

HB2559 (2019) - requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by **November 1, 2022**.

Dr. Harp then provided a brief synopsis of the following bills:

HB 1952 Patient care teams; podiatrists and physician assistants.

HB 1970 Telemedicine services; payment and coverage of services.

HB 1971 Health professions and facilities; adverse action in another jurisdiction.

HB 2169 Physician assistants; licensure by endorsement.

HB 2184 Volunteer license, special; issuance for limited practice.

HB 2228 Nursing and Psychology, Boards of; health regulatory boards, staggered terms.

HB 2457 Medicine, osteopathy, podiatry, or chiropractic, practitioners of; inactive license, charity care.

HB 2557 Drug Control Act; classifies gabapentin as a Schedule V controlled substance.

HB 2559 Electronic transmission of certain prescriptions; exceptions.

HB 2731 Lyme disease; disclosure of information to patients.

SB 1004 Elective procedure, test, or service; estimate of payment amount.

SB 1106 Physical therapists & physical therapist assistants; licensure, Physical Therapy Licensure Compact.

SB 1167 Medicaid recipients; treatment involving opioids or opioid replacements, payment.

SB 1439 Death certificates; medical certification, electronic filing. This bill requires

the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except for under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System.

Dr. Harp advised that this system was implemented several years ago; however, not all practitioners signed up to use it. This bill will make using the EDRS mandatory. To ensure awareness, a notification will be placed in the Board Briefs, and an email will be sent to the Board's licensees who are required to complete death certificates.

SB 1547 Music therapists; Board of Health Professions to evaluate regulation.

SB 1557 Pharmacy, Board of; cannabidiol oil and tetrahydrocannabinol oil, regulation of pharmaceutical processors.

SB 1760 Diagnostic X-ray machines; operation of machine.

SB 1778 Counseling minors; certain health regulatory boards to promulgate regulations.

This report was for information only and did not require any action.

2. Chart of Regulatory Actions

Dr. Harp reviewed the status of the Board's five pending regulatory actions.

This report was for information only and did not require any action.

3. Response to Petition for Rulemaking

Dr. Harp referred to the Petition for Rulemaking submitted by Luke Vetti, DPM. Dr. Vetti asks the Board to consider amending the Regulations Governing the Practice of Medicine, Osteopathy, Podiatry, and Chiropractic, 18VAC 85-20-10 et. seq, specifically 18VAC85-20-141 "Licensure by endorsement", section 4, and 18 VAC85-20-350 "Informed consent" section B. He requests that the American Board of Podiatric Medicine be added to these sections.

Dr. Harp advised that four (4) comments in support of this request were received during the comment period, with none opposed. He also reflected the thinking of the podiatric Board member to the Committee.

MOTION: After a brief discussion, Dr. Ransone moved to initiate rulemaking to adopt the amendments by a fast-track action. The motion was seconded and carried unanimously.

4. Letter regarding Opioid Regulations Impact on Patient Care

Dr. Harp provided a summary of an e-mail from Sydney Rab asking the Board to reconsider its regulations for the prescribing of opioids, Dr. Harp's response to the e-mail, and an article regarding the regulation of opioids.

MOTION: After discussion, Dr. Ransone moved to recommend to the full Board that no action be taken. The motion was seconded and carried unanimously.

5. Reminder

Travel vouchers for this meeting should be submitted no later than June 17, 2019.

Presentation of Consent Order

Dr. Harp presented a Consent Order for the Board's consideration regarding a licensee's reinstatement. After a short discussion, Dr. Ransone moved to accept the Consent Order as presented; Dr. Toor seconded. The motion carried unanimously.

ANNOUNCEMENTS

Members were reminded to stay for probable cause review

NEXT MEETING

September 6, 2019

ADJOURNEMENT

With no other business to conduct, the meeting adjourned at 9:39 a.m.

Ray Tuck, Jr., DC
Vice-President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary