

VIRGINIA BOARD OF MEDICINE
LEGISLATIVE COMMITTEE MINUTES – Virtual Meeting

Friday, January 15, 2021

Department of Health Professions

Henrico, VA

CALL TO ORDER:

Mr. Marchese called the meeting of the Legislative Committee to order at 8:38 a.m.

ROLL CALL:

Ms. Opher called the roll; a quorum was established.

MEMBERS PRESENT:

Blanton Marchese, Vice-President, Chair
Lori Conklin, MD, President
James Arnold, DPM
Amanda Barner, MD
Joel Silverman, MD
Ryan Williams, MD

MEMBERS ABSENT:

Ray Tuck, DC

STAFF PRESENT:

William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director for Discipline
Colanthia Morton Opher, Deputy Director for Administration
Michael Sobowale, LLM, Deputy Director for Licensing
Barbara Matusiak, MD, Medical Review Coordinator
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT:

Scott Castro - MSV
Jerry Canaan, JD
Ben Traynham, JD-MSV

EMERGENCY EGRESS INSTRUCTIONS

Mr. Marchese provided the emergency egress instructions.

APPROVAL OF MINUTES OF JANUARY 31, 2020

Dr. Conklin moved to approve the meeting minutes of January 31, 2020 as presented. The motion was seconded and carried unanimously.

ADOPTION OF AGENDA

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

PUBLIC COMMENT

Scott Castro, Director of Health Policy for the Medical Society of Virginia (MSV), addressed the Committee members and voiced support for the current Code that allows the Board to deny licenses by endorsement based on regulatory or statutory grounds. Mr. Castro also stated that if Virginia were to join the ILMC, MSV urges that 1) the Board be able to reject applicants with disciplinary issues, and 2) the Board explore options as to how providers would avoid double jeopardy issues as it relates to past discipline in other states. Additionally, Mr. Castro voiced MSV's concern over the increased costs for licensure renewals under the ILMC. It is their belief that the license by endorsement pathway and license renewal process as they exist in the current Code is effective. In closing, Mr. Castro advised that MSV has reached out to the patron, Delegate Dan Helmer, stating its willingness to be a resource in regards to HJ 531.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp reminded the Committee of the expectation that Board of Medicine members are to continue serving until their successor has been named. The law governing the Board states that if a member moves from the Congressional District of appointment to another, the seat in the District of appointment becomes vacant. Dr. Walker has moved from the 9th to the 5th, so the 9th District seat is now considered vacant. He will be missed.

NEW BUSINESS

1. Chart of Regulatory Actions

Ms. Yeatts reviewed the Board's regulatory activity as of January 14, 2021. This report was for informational purposes only and did not require any action.

2. Report of the 2021 General Assembly

Ms. Yeatts reviewed the proposed legislation in the 2021 Session and highlighted those below ([active links](#))

- [HB 1737](#) Nurse practitioners; practice without a practice agreement.
- [HB 1747](#) Clinical nurse specialist; licensure of nurse practitioners as specialists, etc.
- [HB 1769](#) Health care providers, certain; licensure or certification by endorsement.
- [HB 1795](#) Counseling, Board of; licensure of professional counselors without examination.
- [HB 1817](#) Certified nurse midwives; practice.
- [HB 1913](#) Career fatigue and wellness in certain health care providers; programs to address, civil immunity.
- [HB 1953](#) Licensed certified midwives; definition of practice, licensure, report.
- [HB 1959](#) Medication abandonment and increasing patient medication adherence; options for reducing rates.
- [HB 1987](#) Telemedicine.
- [HB 1988](#) Board of Pharmacy; pharmaceutical processors; processing and dispensing cannabis oil.
- [HB 2005](#) Disposition of the remains of a decedent; persons to make arrangements for funeral and disposition.

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- [HB 2039](#) Practice as a physician assistant.
- [HB 2044](#) Naturopathic doctors; license required.
- [HB 2061](#) Virginia Immunization Information System; health care entities; required participation.
- [HB 2079](#) Pharmacists; initiation of treatment; certain drugs and devices.
- [HB 2220](#) Surgical technologist; certification; use of title.
- [HB 2259](#) Professions and occupations; licensure by Governor.
- [HB 2272](#) Department of Health Professions; naturopathic doctors.
- [HJ 531](#) Study; Joint Commission on Health Care.
- [SB 1107](#) Medical malpractice; limitation on recovery.
- [SB 1178](#) Genetic counseling; conscience clause.
- [SB 1187](#) Department of Health Professions; practice of physical therapy.
- [SB 1189](#) Licensure of occupational therapists; Occupational Therapy Interjurisdictional Licensure Compact.
- [SB 1192](#) Department of Health Professions; naturopathic doctors.

After the presentation, Ms. Yeatts responded to a Committee member who asked the rationale behind the bill to allow the Governor to overrule the Board. Ms. Yeatts stated she is unable to accurately reflect the reason behind this bill.

3. Reconsideration of Interstate Medical Licensure Compact

Mr. Marchese noted that the DHP Telemedicine Workgroup that met August 5, 2019 suggested that the Board take a fresh look at the Interstate Medical Licensure Compact (Compact). Mr. Marchese provided some history about the Compact and said there are currently 29 member states plus the District of Columbia and Guam. The Compact originated in response to calls for license portability as well as some issues at the national level. The purpose of the Compact is to facilitate physicians practicing across state lines. The way the Compact is written, licensure is left up to the state. The structure of the Compact is dissimilar to the Nursing Compact which allows nurses to cross state lines to work. The Board of Medicine decided in 2016 to try a licensure by endorsement pathway instead of joining the Compact at that time. There are some components of the Compact that are in conflict with the Code of Virginia, including reporting complaints to the Compact before they have been thoroughly investigated.

Dr. Harp pointed the Committee to page 34 of the agenda packet and stated that the average number of licenses obtained per applicant for 2018 and 2019 was 3%, but in 2020 it dropped to 1.6%. Given the pandemic and the wish to practice telemedicine across state lines, one would think that the average number of licenses per physician would have increased in 2020. He stated that the Compact was designed for the cream of the crop – many years of practice, no disciplinary history, board certified, etc. He noted that the licensure by endorsement pathway has similar requirements and has done what the Board expected it to do, to provide an expeditious pathway and save money for applicants applying to Virginia.

Additionally, Dr. Harp referred to HJ 531 that asks the Joint Commission on Health Care to study the advantages and disadvantages of Virginia participating in the Compact.

Dr. Conklin said that she would support sending a recommendation to the Full Board to again vote “no” on Virginia joining the Compact, since the Board already has a pathway that is expeditious, more economically feasible, and maintains Board oversight.

Dr. Harp asked Ms. Yeatts if, in light of the study to be conducted by the Joint Commission on Health Care this year, would it be necessary to send a letter to the Commission stating that the Board will cooperate and provide information as needed.

Ms. Yeatts advised that she can see both sides of this issue. Communicating to the Commission in 2021, that the Board again affirms its position might be beneficial to the work of the Commission. She also mentioned that there are members of the General Assembly who think that the Board is acting for its own self-preservation by not affirming the Compact.

After discussion about what could serve as a rationale for its decision, Dr. Harp advised that he would draft a document to include history and statistics for review by counsel, appropriate Board members, and staff for presentation to the Full Board.

4. Continuing Education on Human Trafficking.

Dr. Conklin advised that, in order to renew her Texas license, she was required to complete 1 hour of continuing education in human trafficking. She said that human trafficking encompasses not only the sex trade but other occupational endeavors as well. People who come across the border are at higher risk for being exploited. She stated that prior to this training, as a physician who interviews patients prior to surgery, she would not have known how to recognize a victim of human trafficking. She then noted that, according to the Institute for Human Trafficking in Fairfax, over 25 million Americans are victims of human trafficking. Virginia ranks 6th in the nation in open cases of trafficking. More incredibly, she said that the human trade business makes more profit each year than Apple, Microsoft, Samsung and Exxon combined.

Dr. Conklin said if the Board is unable to make this training a requirement, can the Board make this information available to the licensees by posting the course information on the website? She added that it would be preferable to require an hour every biennium, but even a one-time requirement would suffice since it is a well-known problem in the Commonwealth.

After discussion, the Committee agreed that it would be acceptable to add it as a one-time requirement, understanding that it would require an action by the General Assembly with an amendment to the regulations.

Ms. Yeatts advised that this Board does not have the authority in the Code to set an annual requirement for continuing education. She agreed that this is a worthy endeavor, but thinks the best alternative is to add educational resources to the Board Briefs and the Board's webpage. Dr. Harp agreed that placing these in the Board Briefs and on the website with a link to the appropriate courses is the best avenue to take.

Ms. Deschenes stated the Board was asked to mandate continuing education (CE) on this topic previously, and it respectfully declined. Many organizations, agencies and entities have important information to disseminate and occasionally ask the Board to create a CE requirement for Board licensees. Mandatory CE on multiple topics can overwhelm licensees. The Board's stance on continuing education has been that licensees know best which CE will

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benefit them in their practice, thereby ensuring that their practice will be safer for the citizens of the Commonwealth. She also agreed that the Board Briefs, which are going directly to practitioners' mailboxes, will make it easier them to access the educational resources.

Mr. Marchese confirmed the consensus of the members that placing an article in the Board Briefs is the action to take with the hope that it gains some attention and that practitioners will take the initiative to read it.

ANNOUNCEMENTS

No Announcements.

NEXT MEETING

May 21, 2021

ADJOURNEMENT

With no other business to conduct, the meeting adjourned at 9:56 a.m.

Blanton Marchese
Vice-President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary