

1 COMMONWEALTH OF VIRGINIA
2 DEPARTMENT OF HEALTH PROFESSIONS
3 BOARD OF MEDICINE

4

5 In re: Public Hearing on Regulations Governing the
6 Practice of Respiratory Care

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7 In re: Public Hearing on Regulations Governing the
8 Practice of Medicine, Osteopathic Medicine,
9 Podiatry and Chiropractic

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9 In re: Public Hearing on Regulations Governing
10 Office-Based Anesthesia

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11 Transcript of the above-styled

12 hearings held on Thursday, the 14th day of July, 2005

13 before the Board of Medicine, commencing at 8:20 a.m.

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2 public hearings this morning.

3 I am Dr. Thomas Leecost, President of
4 the Board of Medicine.

5 This is a public hearing to receive
6 comments on several sets of regulations. We will
7 first receive public comment on proposed regulations
8 for respiratory care practitioners that would allow
9 licensees to use Category 1 hours approved by the AMA
10 for continuing education credit. A copy of the
11 proposed regulation may be found in the back on the
12 back table or in your agenda packet.

13 At this time, I will call on persons
14 who have signed up to comment. As I call your name,
15 please come forward and tell us your name and where
16 you're from.

17 MS. YEATTS: I don't think that is in
18 your agenda packet.

19 DR. LEECOST: Was it on the back
20 table?

21 MS. YEATTS: Yes.

22 DR. LEECOST: It was on the back
23 table. It's not in the agenda packet. Did you need
24 a copy of that since there's no one here to really

25 comment on that?

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1 DR. RANSONE: No.

2 DR. LEECOST: We will next receive

3 public comment on two proposed fast track actions for

4 Chapter 20 regulations governing the practice of

5 medicine, osteopathic medicine, podiatry and

6 chiropractic.

7 The first is proposed to incorporate

8 the legal requirement for a Doctor of Medicine,

9 Osteopathic Medicine or Podiatry to report on his

10 profile any final disciplinary action taken by

11 institutions or entities which result in suspension,

12 revocation of privileges or termination of

13 employment. The requirement for reporting this

14 currently is stated in 54.1-2910.1 of the Code of

15 Virginia. But in addition to the regulation will
16 ensure that practitioners are obligated to report
17 within 30 days. The amended regulation may also be
18 found on the back table.

19 At this time-- Nobody is here to
20 comment on that either.

21 So we'll go to-- The final public
22 comment is on proposed fast track regulation action
23 for Chapter 20 to clarify the performance of a major
24 conductive block for diagnostic and therapeutic
25 purposes due to the required--I'm sorry--does not

1 require the services of an anesthesiologist or a
2 certified registered nurse anesthetist, but could be
3 administered by a qualified physician. This proposal
4 is not the one for circulating nurses on office-based

5 anesthesia. So no comment for that at this time.

6 We'll get to that in just a minute.

7 At this time, I will call on persons

8 who have signed up to comment on fast track

9 regulation action on the rules for office-based

10 anesthesia, but this is the office-based anesthesia

11 involving anesthesiologists and nurse anesthetists

12 administering a major conductive block and it could

13 be administered by a qualified physician. Those are

14 the comments that we are going to accept now. We

15 have one individual here at this time--

16 DR. HARP: Actually, Dr. Leecost, we

17 have two. We have Louise Hershkowitz and Dr.

18 Wilhite. For Board members, you have the green

19 sheet--I think it's green--with the proposed fast

20 track regulation on here that our commenters will be

21 speaking about. So Leslie-- Ms. Hershkowitz was

22 signed up first, to be followed by Dr. Wilhite.

23 DR. LEECOST: Thank you.

24 MS. HERSHKOWITZ: Good morning.

25 Mr. Chairman, Members of the Board of

1 Medicine: My name is Louise Hershkowitz. I'm a
2 certified registered nurse anesthetist and I'm here
3 representing the Virginia Association of Nurse
4 Anesthetists this morning. Thank you very much for
5 the opportunity to speak with you today about the
6 regulations governing office-based anesthesia.

7 VANA is fully supportive of the
8 changes proposed by the Board that would allow
9 physiatrists and others to appropriately treat their
10 patients. We do not believe that it was the
11 intention of the task force that originally proposed
12 these regulations to require an anesthesiologist or
13 nurse anesthetist for major conductive blocks for
14 diagnostic or therapeutic purposes, nor do we believe
15 this was ever discussed by the task force. We
16 encourage you to adopt this change.

17 We do know, however, that it has been

18 suggested that the regulations further be amended to
19 prohibit certified registered nurse anesthetists from
20 administering major conductive blocks for diagnostic
21 or therapeutic purposes in office settings. It has
22 been speculated that if CRNAs have this authority, it
23 would "cross the line into the practice of medicine
24 and open the possibility of freestanding CRNA-run
25 pain clinics". We oppose the suggestion and take

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1 issue with the rationale for a number of reasons.

2 First, under current law and
3 regulations, CRNAs already "engage in practices
4 constituting the practice of medicine". This is
5 specifically authorized in the regulations governing
6 the licensure of nurse practitioners and is an
7 exemption from the Code of Virginia--from the

8 provisions of Virginia Code 54.1-2900, et seq.

9 Secondly, regulations governing the
10 practice of CRNAs specifically require and allow for
11 CRNAs to practice in accordance with the functions
12 and standards defined by the American Association of
13 Nurse Anesthetists. These functions and standards
14 specifically include diagnostic and therapeutic nerve
15 blocks. The changes proposed by the Board of
16 Medicine do not give CRNAs any authority to do what
17 they are not already doing and would not expand their
18 practice.

19 Under current law and regulations, a
20 CRNA can practice only under the medical direction
21 and supervision of a physician. Thus, it would be
22 impossible for a CRNA in Virginia to open a
23 freestanding CRNA-run pain clinic without physician
24 involvement.

25 Four, the office-based anesthesia

1 regulations are part of the regulations governing the
2 practice of medicine, osteopathy, podiatry and
3 chiropractic. We do not believe that it's
4 appropriate to include CRNA scope of practice issues
5 in this document.

6 Fifth, CRNAs safely and effectively
7 administer regional blocks for surgery, as well as
8 for diagnostic and therapeutic procedures, in
9 physician office-based practices today. There is no
10 indication that restricting this practice is
11 necessary to protect patient safety.

12 In some underserved areas of the
13 Commonwealth, there is no anesthesiologist present
14 who can administer these blocks for diagnostic or
15 therapeutic purposes. Thus, preventing CRNAs from
16 administering them in physicians' offices would
17 unnecessarily restrict access to patient care.

18 CRNAs routinely provide regional
19 blocks to surgical patients for pain control
20 postoperatively. These blocks are not necessarily

21 for the surgical procedure, but are the most
22 effective way to control pain after the surgery and
23 represent the standard of care for pain control in
24 certain situations.

25 If the additions suggested were

1 adopted--if the additional suggested changes were
2 adopted, these blocks could be construed as
3 non-surgical and patients would be denied the
4 standard of care for pain control in these
5 circumstances.

6 Finally, creating different scopes of
7 practice that depend on practice settings is a
8 potential regulatory trap for all practitioners. A
9 CRNA who routinely administers regional blocks for
10 diagnostic or therapeutic purposes in a hospital or

11 an ambulatory surgery center--and the physician who
12 supervises that CRNA--would face potential
13 disciplinary action if the same blocks were performed
14 in a physician's office.

15 For all these reasons, the VANA
16 requests that the Board of Medicine advance the
17 amendment as originally proposed and not consider
18 further changes. We support the proposed changes
19 that would assure physicians their full scope of
20 practice. We would hope that these regulations would
21 allow CRNAs to have the same. Thank you.

22 DR. LEECOST: Thank you for you
23 comment.

24 Ms. Wilhite. Correction. Dr.
25 Wilhite.

1 DR. WILHITE: My name is Anne
2 Wilhite. I am the president-elect of the Virginia
3 Society of Anesthesiologists.
4 I disagree with the previous speaker.
5 I think that the intent of this amendment is to
6 include non-anesthesiologist physicians who practice
7 pain management within the current office-based
8 guidelines. Nurse anesthetists receive 18 months of
9 training. They do not receive training in pain
10 management. Currently, anesthesiologists who
11 practice pain management undergo four years of
12 medical school, four years of residency, an
13 additional one to two years of fellowship in pain
14 management.
15 I understand that other physicians
16 are also trained in pain management in some of the
17 residency programs. I think it is an error to give
18 nurse anesthetists additional scope of practice.
19 Although, it is true that nurse anesthetists do
20 regional blocks in hospital settings, they are under
21 the supervision and medical direction of
22 anesthesiologists. Unfortunately, in office
23 settings, there is not the same credentialing process

24 that exists in hospitals or surgery centers.

25 I think that by adding this language,

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1 and, basically, the only language that we disagree
2 with is the second sentence. "A major conductive
3 block performed for diagnostic or therapeutic
4 purposes may be administered for a non-surgical
5 procedure by a doctor qualified by training and scope
6 of practice"-- Just the last bit of this-- "Or by a
7 certified registered nurse anesthetist". We believe
8 that this last phrase "or by a certified registered
9 nurse anesthetist" should be struck from this
10 amendment.

11 If a nurse anesthetist practices pain
12 management in a hospital setting or an ambulatory
13 surgery center, they are credentialed by that

14 facility. They are also under the direction of a
15 physician who is specifically trained to administer
16 those blocks.

17 I think that what we're trying to do
18 is make office-based practice safe. And I think by
19 bypassing this credentialing process and giving nurse
20 anesthetists an additional facet or additional scope
21 of practice, which they are not adequately trained to
22 do, is a mistake. And it's potentially a safety
23 issue for the patients in the State of Virginia.

24 So I would urge you to strike "or by
25 a certified registered nurse anesthetist" from the

1 last sentence of this proposed amendment.

2 DR. LEECOST: Thank you for your
3 comment.

4 DR. MOSBY: Dr. Leecost, is it
5 appropriate to ask a question of the speakers for
6 clarification?

7 DR. LEECOST: No. This is only a
8 hearing and we are really not discussing anything at
9 this point. Hold on for just a minute for
10 clarification.

11 We'll just hold all comments and
12 questions until we actually get to discussion.

13 Is there anyone else that would like
14 to comment on the regulations that we have gone over
15 at this time?

16 (No response.)

17 DR. LEECOST: Dr. Mosby, did you want
18 to ask your question now?

19 DR. MOSBY: Thank you. Yes.

20 I would like clarification on what
21 determines a major conductive block. Where is the
22 cutoff in that? So I'm not really sure what we would
23 be voting on when we say major conductive block. I
24 need some clarification on that.

25 MS. YEATTS: Dr. Leecost, may I

1 clarify one thing?

2 DR. LEECOST: Yes.

3 MS. YEATTS: This is a comment period
4 on fast track regulations. The comment period
5 extends until the 29th of July. So this is not an
6 agenda item for your discussion today. It will be an
7 agenda item for your discussion at the next meeting
8 because you will not be making a decision on this
9 item today since you're in the middle of a comment
10 period. We will continue to receive comment until
11 the 29th of July.

12 DR. MOSBY: I appreciate that, but
13 this was not discussion. This was just a definition.

14 MS. YEATTS: That's fine. I'm not
15 trying to squelch your question. I'm just saying it
16 will not be-- We will not be discussing and voting

17 as a part of the agenda today, but you certainly have
18 a right to ask your question and have it answered.

19 DR. LEECOST: Dr. Mosby, I really
20 appreciate your question, and we will have a
21 definition for you prior to any kind of severe
22 discussion on this. Okay?

23 DR. MOSBY: Thank you.

24 DR. CLOUGHERTY: Dr. Leecost.

25 DR. LEECOST: Yes.

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1 DR. CLOUGHERTY: If I may, I can
2 direct Dr. Mosby to the actual rules and regulations
3 where they include a definition of major conductive
4 block and minor conductive block for your review.

5 DR. MOSBY: Thank you.

6 DR. LEECOST: Any other comments on

7 the regulations that we have proposed this morning?

8 (No response.)

9 DR. LEECOST: I'd also remind
10 everyone that written comments may also be received
11 and should be directed to Dr. William Harp, the
12 Executive Director of the Board.

13 For the respiratory care practitioner
14 regulation on CEs, the comment period closes on July
15 29th.

16 For the proposed fast track
17 amendments for regulations for physician profiles for
18 comment period closes on September 9th.

19 For the proposed fast track
20 regulation amendments for office-based anesthesia, as
21 discussed, the comment period will close on July
22 29th.

23 For the proposed regulations for
24 respiratory care practitioners, all written and
25 electronic comments will be considered prior to the

1 Board's adoption of the final regulations at its
2 meeting on September 16th.

3 For fast track actions, the
4 amendments become effective approximately 15 days
5 after the conclusion of the comment period unless
6 objection is received from ten or more persons or
7 from a member of the applicable legislative committee
8 of the General Assembly. If that occurs, the Board
9 will proceed with the normal promulgation process
10 with initial publication of the fast track
11 regulations serving as a notice of intent of
12 regulatory action.

13 This concludes our hearing. If there
14 are questions, you may address them to the Chair or
15 to Ms. Yeatts, our agency regulator coordinator.

16 Thank you.

17 (Whereupon, the hearing adjourned at
18 8:35 a.m.)

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1 CERTIFICATE OF REPORTER

2 STATE OF VIRGINIA

3 COUNTY OF HANOVER

4

5 I, Denise M. Whitehurst, Court Reporter,

6 certify I reported and transcribed the foregoing,

7 which is complete and accurate to the best of my

8 ability.

9 I am not related to nor employed by any

10 counsel, witnesses, or parties, nor otherwise

11 interested in the outcome thereof.

12 Given under my hand this 19th day of July,

13 2005.

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Denise M. Whitehurst, Court Reporter

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