

**VIRGINIA BOARD OF HEALTH PROFESSIONS  
DEPARTMENT OF HEALTH PROFESSIONS  
FULL BOARD MEETING  
September 19, 2006**

**TIME AND PLACE:** The meeting was called to order at 10:07 a.m. on Tuesday, September 19, 2006, at the Department of Health Professions, 6603 W. Broad St., 5<sup>th</sup> Floor, Room 1, Richmond, VA.

**PRESIDING OFFICER:** David H. Hettler, O.D., Presiding Board Member

**MEMBERS PRESENT:** Susan G. Chadwick, Au.D.  
Meera A. Gokli, D.D.S.  
Damien Howell, P.T.  
Billie W. Hughes, F.S.L.  
Juan M. Montero, II, M.D.  
Mary M. Smith, N.H.A.  
Demis L. Stewart, Citizen Member  
Joanne Taylor, Citizen Member  
Lucia Anna Trigiani, Esq., Citizen Member  
John P. Turner, L.P.C.  
John T. Wise, D.V.M.

**MEMBERS NOT PRESENT:** David R. Boehm, L.C.S.W.  
Lynne Cooper, Citizen Member  
Mary Gregerson, Ph.D.

**STAFF PRESENT:** Robert A. Nebiker, Agency Director  
Sandra W. Ryals, Chief Deputy Director  
Emily Wingfield, Assistant Attorney General  
Elizabeth A. Carter, Ph.D., Executive Director for the Board  
Elaine Yeatts, Senior Regulatory Analyst  
Susan Stanbach, Senior Management Analyst  
Faye Lemon, Director, Enforcement  
Carol Stamey, Administrative Assistant

**OTHERS PRESENT:** Tyler Cox, MSV  
Susan Ward, VHHA

**QUORUM:** With twelve (12) members present, a quorum was established.

**PUBLIC COMMENT:**

No public comment was presented.

**BOARD ORIENTATION &  
COMMITTEE STRUCTURE  
REVIEW:**

Dr. Carter presented an overview of the Board of Health Professions' powers and duties, its history, and its major policy reviews and activities and Committee structures. She requested that board members review the workplan and committee structures and advise which committees on which they wish to serve. Dr. Carter noted that additional board member training and organizational planning will be conducted at the October meeting in Williamsburg in conjunction with the CAC meeting. The full board will meet on, Wednesday, October 18, 2006 from 4:00 to 6:00 p.m.

**APPROVAL OF MINUTES:**

On properly seconded motion by Ms. Stewart, the Board voted unanimously to adopt the minutes of the April 18, 2006 meeting.

**COMMITTEE REPORTS:**

**Education Committee**

Ms. Smith and Ms. Jolly presented a brief update of Citizen Advocacy Center's October meeting agenda. Ms. Jolly reported that the board meeting format was arranged to allow breakout sessions by committee. Ms. Jolly noted that a crosswalk of the following topics for discussion will be presented in depth: the Board's 40th anniversary perspective, its history, authorities, policy reviews, and legislation, including discussion of the adoption rate and impact.

**Practitioner Self-Referral Committee**

Dr. Hettler reported that the Committee had met and reviewed two requests for advisory opinions: (1) Tuckahoe MRI, LLC and (2) Winchester Neurological Consultants, Inc.; Winchester Orthopaedic Associates, LTD and Medical Circle, LLC. Due to the need for legal expertise and better efficiency, Dr. Hettler requested that the Board consider proposing regulatory amendments to allow for an agency subordinate to review applications for Practitioner Self-Referral advisory opinions. The issue was noted as a future agenda item for discussion.

**DEPARTMENT DIRECTOR'S  
REPORT:**

Mr. Nebiker apprised the Board that he was retiring effective the first of October. He presented an overview of his top ten objectives for the agency's strategic plan comprised in 2002 and their results. Counting down in reverse:

#10 Terrorism response - implementation of the Emergency Contact Information Program in conjunction with the Department of Health and issuing temporary licenses subsequent to Hurricane Katrina's devastation.

#9 and #8 Informative Studies and Identifying Problematic Law and Regulation -- Significant relevant work includes the Sanctions Reference Study, already being implemented for Medicine, Dentistry, Nursing, and Veterinary Medicine, with work for the other boards proceeding. Also, of far-reaching impact, is the Assisted Living Administrator sunrise review which resulted stronger accountability on behalf of clients and a significant reorganization of the agency, including additional staff. Also, the Board of Medicine's ethics regulations provide a model for appropriately addressing informed consent, record keeping, patient communication and prescription drug issues.

#7 Customer Satisfaction Survey -- is sent to all new licensees for feedback on their application process experiences. Annually, 20,000 to 30,000 applications are filed. Each year, we achieve overall positive ratings of 90% or above. This year 94% of those responding were satisfied or very satisfied.

#6 Improve Reporting and Clear Audit Findings -- quarterly statistics on agency performance measures and other management information are completed. The results of the most recent audit have been sent to all board members. There were no negative findings and we have cleared all previous outstanding findings.

#5 Exploit the Internet -- Over three million visits were made to the agency website in FY 2006. In addition to all the relevant statutes, regulations, newsletters and relevant board information, and the agency management statistics described in #6 are published on the website under "Statistics." Additionally, 80% of licensees renewed online in FY 2006.

#4 Promote Compliance and Prevent Pharmaceutical Drug Diversion -- Establishment of better misconduct reporting requirements through HB1441 (2003) and attendant educational efforts have raised awareness of the importance of complying with the statutes and

regulations which protect the public's health and welfare. The Prescription Monitoring Program, initially a two-year, pilot for Schedule II in the southwestern portion of the state, has expanded to Schedule II through IV prescriptions across the state. Shortly, unsolicited reports of suspected patient diversion activity will be sent to the prescribers. Overdoses of prescription drugs outpace methamphetamine overdose. It is hoped that

#3 Provide Health Care Delivery Services, including Workforce Information -- Although our Internet site is full of useful information, there are citizens who either do not have access or do not choose to use the Internet. They prefer telephone communication. To address their needs, DHP has begun participating in a six-month trial of the new 211 phone service. This service allows a caller to obtain a variety of health and human services information over the phone. Two of the services in greatest demand licensure verification and physician profiling -- are accessible through this system.

#2 Ensure Boards are Able to Make Informed, Equitable Disciplinary Decisions -- thorough investigations and proceedings and board member training and support are at the heart of meeting this goal. In 2002 there were only 121 FTE; in 2006, there are 199, 80% of whom are involved with Enforcement or Administrative Proceedings activities.

#1 Eliminate Disciplinary Case Backlog and Meet Established Standards -- by implementing JLARC recommendations which focus on critical cases. For FY 2006, 7% more cases were closed, with 15% more cases received. Twelve new investigators will be hired to address the increased demand. Boards are using agency subordinates and confidential consent agreements, where appropriate, to move cases more expeditiously and focus board member resources on cases more directly related to standard of care. The Board of Nursing has resolved 2300 cases with agency subordinates and confidential consent agreements have resolved 1200 cases, of these 800 involved physician profile issues.

Dr. Montero expressed his gratitude for Mr. Nebiker's service and mentioned that the *Virginian Pilot* had written an editorial in recognition of this retirement and

praised his service to the Commonwealth.

Mr. Howell also expressed his thanks for the service provided by Mr. Nebiker. Additionally, Mr. Howell requested that Mr. Nebiker provide insight into future trends and any recommendations for review by the Board. Mr. Nebiker offered that there will likely be increases in ancillary personnel providing healthcare necessitating more flexibility in scopes of practice of existing professions. He stated that the scope of practice statutes of the various boards may be too restrictive to allow for the expansion of ancillary personnel. Further, he stated that the Board should consider conducting a review of all the boards' statutes and consider the statutes in other states and new model statutes being offered by the various associations of state boards.

**REGULATORY OVERVIEW:**

Ms. Yeatts presented an overview of the regulatory process and the current regulatory actions of each board. (See Attachment #1).

Ms. Yeatts reported that the Department of Health Professions is conducting a periodic review of all the boards' Public Participation Guidelines Regulations.

On properly seconded motion by Mr. Howell, the Board voted unanimously to adopt the Notice of Intended Regulatory Action on the Board of Health Professions' Public Participation Guidelines Regulations.

**2007 CALENDAR:**

The following dates were set for the meetings of the Board of Health Professions.

January 18, 2007

April 20, 2007

July 31, 2007

October 24, 2007

January 29, 2008

**EXECUTIVE DIRECTOR'S REPORT:**

**Telehealth Update**

Dr. Carter presented a brief overview of the history and issues relating to telehealth. Additionally, the various boards were requested to review and identify effects and/or implications of electronic practice and submit their reports to the Board. The Boards of Medicine, Nursing and Pharmacy submitted reports which are provided in Attachment #2.

### **Budget**

Dr. Carter noted that the Board continued to stay within its allotted budget. Further, she reported that Susan Stanbach had been transferred from the Director's office to the Board of Health Professions staff to better address the Board's workload.

### **NEW BUSINESS:**

Dr. Hettler suggested that there is a need for a new Committee of the Board to specifically review the budget.

Ms. Trigiani reported that the Nominating Committee will meet in October to develop a slate of officers. She invited members to submit their requests for Chair and Vice-chair.

### **VIRGINIA CRIMINAL BACKGROUND CHECK OVERVIEW:**

Lt. Thomas W. Turner, Virginia State Police, apprised the Board of the history and current policies involving criminal background checks through Virginia's Central Criminal Records Exchange (CCRE). He reported that the Sex Offender Registry (SOR) was established in 1994 to provide a means of citizen awareness of offenders with sexually related criminal backgrounds who may be living near them. Name, photographs, date of birth, and address are included in the SOR. The SOR, alone, is receiving over 90,000 inquiries a day. Lt. Turner stated that additional equipment is needed to accommodate the recent increase in overall inquiries to their systems.

Lt. Turner reported that inquiries to both systems involve either name searches or fingerprint searches. Name searches costs are approximately \$15 per person and \$37 for finger print searches which are conducted through the FBI. He stated that legislation would be required to allow for criminal background checks for DHP's applicants. Currently, DHP is not entitled to request checks without probable cause. He recommended that the Department examine the statutes pertaining to the Department of Social Services, §63-901.1.

Lt. Turner further detailed the history of Virginia's CCRE which began in 1966 in the Office of the Attorney General and moved to the State Police in 1968. The CCRE was designed for use by criminal justice agencies

in the furtherance of investigations or for correctional institutions.

Through the years, access by non-criminal justice entities, for pre-employment checks, largely, became permitted by statute. These include school teachers, employees of the Lottery and Racing Commission, and staff at day care centers and nursing homes. Also, Virginia's *Child Protective Services Act* provides for checks to assist in suitable child placements. In addition, under a different statutory provision, certain state employee positions are now deemed as "critical" for which potential incumbents are checked.

Lt. Turner reported that, at one time, the records were maintained in a spiral notebook. Now there are over 385,000 name records and 165,000 fingerprint records.

Lt. Turner noted, however, that Virginia's records, like that for all other states' systems, are not 100% complete. Not all of the existing arrest, disposition, and correctional data for each person's record are in the system. But, Virginia's system fares much better than most, with over 85% of the records being deemed complete. There are improvements each year, not only in improving completeness but also in general efficiency in accessing the data. Electronic fingerprinting is available now and allows for confirmation by the FBI within 10 minutes. Just a few years ago, paper print verification could take weeks or even months. Federal funding relating to the Brady Bill has enabled more states, like Virginia, to institute electronic fingerprinting systems, such as Livescan.

Fingerprint checks are superior to name searches. Name searches only obtain Virginia records. But, fingerprint checks must be specifically permitted by law. Even then, 100% verification of the individual submitting the prints is not possible. Lt. Turner noted that it is essential to determine as best as possible whose fingerprints are being submitted. Identity theft has become a significant crime in the U.S. He described an instance of a mother submitting prints on behalf of her daughter who had a criminal history. The deceit was uncovered because the mother, herself, had been arrested over thirty years ago.

The Virginia General Assembly implemented the Sex Offender Registry, in 1994, as separate from the general criminal history record. The information in the Sex Offender Registry is public (e.g., name, date of birth, address, height, weight). By 1997, the Registry housed records for 3,400 persons. But there was no mechanism for follow-up to determine the whereabouts of the individual offenders. In 1998, the database was available on website and provisions for follow-up verifications of the offender's whereabouts were brought about. There are currently 45 enforcement FTEs devoted to this task. Each offender is checked every 30 days. Those offenders who disregard the reporting requirement can become electronically monitored or re-incarcerated.

Lt. Turner advised the Board that the research required of criminal background checks is costly. Current fees do not cover the expenses and enhancements in equipment and staffing are continuing.

No data has been compiled on the frequency of "hits" (i.e., finding a history for a checked individual) However, Lt. Turner indicated that less than 6% of the hits reveal convictions. He added that courts can expunge records after ten years, if petitioned. However, conviction data are never removed from Virginia's records.

Dr. Hettler thanked Lt. Turner for his informative presentation.

**AYURVEDIC MEDICINE  
PRESENTATION:**

**Request for Sunrise Review into the Need to Regulate  
the Practice of Ayurvedic Medicine**

Dr. Betsy B. Singh, President, BRCG and Vice President, American Association of Practitioners and Researchers in Ayurveda and Dr. Lakshmi C. Mishra, Director, Ayurvedic Health Care, presented a summary of Ayurvedic Medicine through a slide presentation. The slide presentation is incorporated into the minutes as Attachment #3. They requested that the Board review the need to regulate practitioners of ayurvedic medicine. The matter was referred to the Regulatory Research Committee for review.

**ADJOURNMENT:**

The meeting adjourned at 3:40 p.m.



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David H. Hettler, O.D.  
Presiding Board Member

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