

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

February 19, 2015

Department of Health Professions

Henrico, VA

**CALL TO ORDER:** Dr. Reynolds called the meeting of the Board to order at 8:40 A.M.

**ROLL CALL:** Ms. Opher called roll. A quorum was established.

**MEMBERS PRESENT:** Wayne Reynolds, DO, President  
Kenneth Walker, MD, Vice-President  
Barbara Allison-Bryan, MD, Secretary-Treasurer  
Syed Ali, MD  
Randy Clements, DPM  
Lori Conklin, MD  
Siobhan Dunnavant, MD  
Irina Farquhar, PhD  
Deborah DeMoss Fonseca  
Frazier Frantz, MD  
The Honorable Jasmine Gore  
Lorri Kleine, JD  
Maxine Lee, MD  
Stuart Mackler, MD  
Kevin O'Connor, MD  
Ray Tuck, DC

**MEMBERS ABSENT:** Kamlesh Dave, MD  
David Giammittorio, MD

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Alan Heaberlin, Deputy Executive Director, Licensing  
Colanthia Morton Opher, Operations Manager  
Lynn Taylor, Discipline Support Specialist  
David Brown, DC, DHP Agency Director  
Elaine Yeatts, DHP Senior Policy Analyst  
Erin Barrett, JD, Assistant Attorney General

**OTHERS PRESENT:** Mike Jurgensen, MSV  
Andrew Zinkel, Health Partners  
Jon Joseph, Christian & Barton  
Steve Heretick, JD, FSMB  
Jonathan Jagoda, FSMB

**OTHERS PRESENT** (cont.): Floyd Herdrich  
Robin Cummings, MSV  
Claudette Dalton, MD, NCCPA  
Richard Grossman, Vectre Corporation

## **EMERGENCY EGRESS PROCEDURES**

Dr. Walker read the emergency egress procedures for Conference Room 2.

## **APPROVAL OF THE OCTOBER 16, 2014 MINUTES**

Dr. O'Connor moved to approve the minutes from the Board meeting of October 16, 2014. The motion was seconded and carried unanimously.

## **APPROVAL OF THE AGENDA**

Dr. Mackler moved to approve the agenda as presented. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Dr. Reynolds acknowledged and welcomed the guests that were present.

Andrew Zinkel, MD, Associate Medical Director for HealthPartners Health Plan in Minnesota, addressed the Board with respect to the draft Telemedicine Guidance Document and provided a brief background on the practices and processes of Virtuwel. Dr. Zinkel supports the development of the guidance document, but asked that language be included to differentiate between a static online questionnaire and an adaptive, interactive, responsive online questionnaire. Dr. Zinkel concluded his comments by requesting the Board to take into account the existing language in §54.1-3303 and not restrict the formation of the practitioner-patient relationship based on the form of technology used. Dr. Zinkel fielded questions from the Board members and advised that there are six certified physicians that review all the protocols and perform chart review. All of the nurse practitioners they employ are Virginia-licensed. Patients' concerns about their care are handled by a phone call with a recommendation to follow up with a practitioner. Dr. Zinkel stated that, to date, no malpractice cases have been filed for the care provided by HealthPartners.

The floor closed at 9:10 a.m.

## **NEW BUSINESS**

## **DHP DIRECTOR'S REPORT**

Dr. Brown addressed the Board and provided an update for the Governor's Task Force on Prescription Drug and Heroin Abuse. He reported that doctor shopping has decreased by 75% as a result of the increased use of the PMP; however the number of opioid overdoses is still climbing.

Dr. Brown informed the Board that several bills have passed that would support the goals of the Task Force. The bills will allow DHP to register all prescribers all at once, will clarify the language about the mandatory use of the PMP, and will require a hospice facility to notify the Board of Pharmacy when a patient expires so any unused controlled substances can be accounted for and disposed of properly.

Dr. Brown said that one of the recommendations of the Task Force was to create a website for the public to access information about the use and misuse of prescription drugs, treatment resources, proper disposal, etc. Dr. Brown asked the Board if it would approve a onetime expenditure of \$30,000 to fund the development of this site.

During the discussion, the Board members agreed that even though there are a multitude of existing websites with valuable information, one that is Virginia-specific would be beneficial. In response to who would be accountable for maintaining this site and how to keep it optimized for the public, Dr. Brown said that a hired consultant and vendor, along with Public Safety, Behavioral Health, VDH and DHP, would work together to update the content and maintain visibility of the site. Dr. Dunnivant suggested that a 3-year contract for maintenance and optimization be included as part of the development agreement.

After the discussion, Dr. O'Connor moved to authorize, in conjunction with the Executive Director and Executive Committee, \$30,000 for the development once the site has been formulated. Dr. Mackler seconded; the motion was carried unanimously.

## **REGULATORY AND LEGISLATIVE ISSUES**

- Report from the 2015 General Assembly

Ms. Yeatts advised that HB2063 had just passed the General Assembly and that the bill amends the definition of telemedicine services.

- Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of pending Board of Medicine regulations and advised that 1) Regulations Governing the Practice of Physician Assistants – Qualifications for fluoroscopy, 2) Regulations Governing the Practice of Licensed Acupuncturists – Acceptance of graduates of candidacy programs, and, 3) Regulations Governing the Registration of Surgical Assistants and Surgical Technologists –Initial regulations for registration, all went into effect February 13, 2015.

This report was for informational purposes only and did not require any action by the Board.

- Adoption of fast-track amendment for athletic trainers

Ms. Yeatts advised that the Advisory Board on Athletic Training recommends adding a definition of student trainer to clarify that the regulations refer to a person enrolled in an AT program at the bachelor's or master's level.

After discussion, Dr. Mackler moved to adopt the proposed amendment by a fast-track action. The motion was seconded and carried unanimously.

- Adoption of fast-track amendment for polysomnographic technologists

Ms. Yeatts informed the Board that the Advisory Board on Polysomnographic Technology recommends amending the section on initial licensure to update the name of a credentialing body, and the section on renewal and reinstatement to clarify requirements for basic life support training.

After discussion, Dr. Allison-Bryan moved to adopt the proposed amendments by a fast-track action. The motion was seconded and carried unanimously.

- Adoption of fast-track amendment for physician assistants

Ms. Yeatts said that the Advisory Board on Physician Assistants recommends amending the disclosure section to eliminate the requirement for a signature by the supervising physician on a prescription.

During the discussion, the members voiced apprehension about eliminating the requirement. Dr. Allison-Bryan commented that the name and the signature are two different things. If a patient or a pharmacist has a question, they should know who to contact. Dr. Dunnavant stated that there may be some limitations to recording both the physician's and the physician assistant's name on an e-prescription, and asked Mr. Heaberlin to speak with the Advisory Board at their next meeting to determine all the nuances of the issue.

Dr. Dunnavant then moved to table the recommendation and address it at the next Full Board meeting. The motion was seconded and carried unanimously.

- Adoption of Notice of Intended Regulatory Action for amendment to increase hours of continuing education for behavioral analysts

Ms. Yeatts advised that the Advisory Board on Behavioral Analysis recommends increasing the number of hours required to renew an active license from 24 to 32 per biennium for behavior analysts, and from 16 to 20 per biennium for assistant behavior analysts. The recommendation was made because it is believed that the consistency of CE requirements between the Board and

the Behavior Analyst Certification Board would encourage licensees to maintain their certification with the BACB.

After discussion, Dr. Allison-Bryan moved to adopt the NOIRA as recommended by the Advisory Board. The motion was seconded and carried unanimously.

- Public Comment on fast-track regulation for Registration of Surgical Assistants and Surgical Technologists

Ms. Yeatts advised that in 2014, the General Assembly passed legislation mandating the Board to adopt regulations for registration of surgical assistants and surgical technologists who hold the credentials specified in law. The credentialing bodies are specifically listed in the Code, and the Board is not authorized to accept any other bodies. During the comment period, a number of commenters requested that the Board accept the American Board of Surgical Assistants (ABSA) as a certifying body for Virginia. This action would require legislation to amend §54.1-2956.13

After discussion, Dr. Allison-Bryan moved to refer this issue to the Legislative Committee for review. The motion was seconded and carried unanimously.

- Adoption of final regulations for nurse practitioners

Ms. Yeatts stated that the proposed regulations would be replacing the emergency regulations. The Board of Nursing adopted the proposed regulations without changes as final on January 27<sup>th</sup>.

After a brief discussion, Dr. Dunnivant moved to accept the regulations as presented. The motion was seconded and carried.

## **FEDERATION OF STATE MEDICAL BOARDS LIAISON REPORT**

Mr. Heretick, former Board of Medicine member and current FSMB Board of Directors member, addressed the Board and then introduced Jonathan Jagoda who gave an informative presentation on the Interstate Medical Licensure Compact.

Mr. Jagoda highlighted the need for license portability. The goals of the interstate compact are 1) multi-state practice without compromise to patient safety or quality of care, 2) maintenance of the current regulatory environment, and 3) to provide a nationwide solution that is implemented by the states without federal licensure. Mr. Jagoda also provided background information on the FSMB House of Delegates' Directive, the compact's key principles, its eligibility requirements, the proposed interstate compact pathway, and the handling of disciplinary actions.

Mr. Jagoda noted that 27 states have formally endorsed this directive. Thirteen states are introducing it in their legislatures, and there is growing support from medical and hospital associations. Mr. Jagoda advised the Board would need to pursue legislation if it wished to join the compact.

Dr. Mackler moved that the Board formally support the idea of the compact. It was seconded

and passed unanimously. It was suggested that the compact be referred to the Legislative Committee for analysis.

## **REPORT OF OFFICERS AND EXECUTIVE DIRECTOR**

### **PRESIDENT'S REPORT**

Dr. Reynolds announced that he recently attended an AOA meeting where there was a lengthy discussion about the designation of "assistant physician" in Missouri.

### **VICE-PRESIDENT'S REPORT**

No report.

### **SECRETARY-TREASURER'S REPORT**

No report.

### **EXECUTIVE DIRECTOR'S REPORT**

- Revenue and Expenditures Report

Dr. Harp reviewed the revenue and expenditures report noting the expenditures for services of Enforcement, APD, the Data Division and the Attorney General's Office. The Board's cash on hand as of December 31, 2014 was \$10.87 million.

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

- Health Practitioners' Monitoring Program Statistics

Dr. Harp noted that the Board of Medicine and Nursing continue to have the majority of participants in the program. The current total number of Medicine participants in the program is 110.

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

- Recognition of Board members whose terms are expiring

Dr. Harp acknowledged those Board members whose terms are expiring June 30, 2015 and encouraged those eligible for reappointment to apply.

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

- FSMB Annual Meeting

Dr. Harp advised that Dr. Reynolds, Dr. Walker, Ms. DeMoss Fonseca, and Alan Heaberlin are planning on attending FSMB's Annual Meeting in April. He asked if anyone else might be interested; Dr. Mackler and Dr. Conklin said they would like to attend.

## **COMMITTEE AND ADVISORY BOARD REPORTS**

- Committee Appointments and Advisory Board Reports

Dr. Mackler moved to approve the Committee appointments and minutes en bloc. The motion was seconded and carried unanimously.

## **OTHER REPORTS**

- Assistant Attorney General

Ms. Barrett informed the Board that an individual's second appeal to have his case heard by the Virginia Supreme Court had been denied. The appeal was regarding the denial of his petition for reinstatement in 2011. Ms. Barrett also informed the Board that another individual has appealed her case to the US 4<sup>th</sup> Circuit Court. The Board should hear the status of the appeal by summer.

At the request of Ms. Barrett, Dr. Mackler moved to convene a closed session meeting pursuant to Section 2.2-3711(A)(7) of the Code of Virginia for consultation with legal counsel pertaining to actual or probable litigation. Additionally, he moved that William Harp, MD, and Jennifer Deschenes attend the closed meeting as their presence in the closed meeting is deemed necessary. The motion was seconded and carried unanimously.

Upon return to open meeting, Dr. Reynolds asked all those who attended the closed meeting to certify, to the best of their knowledge that the Board heard, discussed or considered only those public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion by which the closed meeting was convened, to say "Aye" and all those who do not certify to say "No". All said "aye".

### Board of Health Professions

Dr. Frantz advised that work is being done to expand dental care in the state. He noted that next to mental health, dental care is second as a concern.

### Podiatry Report

Dr. Clements had no report.

### Chiropractic Report

Dr. Tuck had no report.

## Committee of the Joint Boards of Nursing and Medicine

No additional reporting items.

Dr. Mackler moved to accept the reports as presented. The motion was seconded and carried unanimously.

## Ad Hoc on Telemedicine

Dr. O'Connor thanked everyone for their participation on the committee, especially Karen Rheuban, MD, Erin Barrett, JD and Jennifer Deschenes, JD for their work on the guidance document and striking a balance between access and safety. Dr. O'Connor stated that it is a living document that is defined by statute. Since the initial Ad Hoc on Telemedicine meeting, HB2063 has amended the definition of telemedicine. He recommended the adoption of the guidance document to establish the Board's position on what is considered acceptable telemedicine practice.

Ms. Barrett suggested that the definition of telemedicine in the guidance document be updated to reflect the amendments by the General Assembly and that the changes to §54.1-3303A be footnoted in the guidance document.

Dr. Mackler moved to accept the guidance document with the suggested amendments. The motion seconded and carried unanimously.

## **LICENSING REPORT**

- Licensing Statistics

Mr. Heaberlin reviewed with the Board an updated licensee count, licenses issued, and license renewal/expiration count report.

These reports were for informational purposes only and did not require any action.

- Expert Witness Letters

Mr. Heaberlin told the Board that in order for an out-of-state physician to be certified as an expert witness in a medical malpractice case in the Commonwealth, the attorney must present a letter to the judge attesting to the individual's qualifications for licensure. In order to obtain this letter, the attorney sends the Board the potential witness' CV. Board staff checks to ensure that the individual holds a medical degree, has passed an appropriate examination, and has completed the required postgraduate training. Then a certification letter is drafted and, along with the physician's CV, is sent to the Executive Director for his signature. After approval by the Executive Director, the certification letter goes to Dr. Brown, DHP Director, or his designee for signature, and then back to Board staff for notarization, processing and mailing. Mr. Heaberlin said that 40 have been processed this year so far.

Mr. Heaberlin asked the Board to accept the recommendation of the Legislative Committee and allow a fee of \$100.00 be charged for processing these requests.

Dr. Conklin moved to accept the Legislative Committee's fee recommendation but also moved that the process be reviewed in a year to determine if the fee is sufficient. The motion was seconded and carried unanimously.

- Acceptance of PACE (Providers of Approved Continuing Education)

Mr. Heaberlin noted that 18VAC85-20-235 Continued competency requirements for renewal of an active license, Reinstatement A1(a) states that Type 1 Hours in chiropractic shall be clinical hours that are approved by a college or university accredited by the Council of Chiropractic Education or any other organization approved by the Board. The issue is that there is no other organization approved by the Board.

Mr. Heaberlin noted that PACE is a program of the Federation of Chiropractic Licensing Boards that upholds standards for continuing education for chiropractors. He asked the Board to approve PACE credit hours to be acceptable as Type I continuing education for renewal and reinstatement.

Dr. Ali moved to approve PACE as an accrediting organization for continuing education. The motion was seconded and carried unanimously.

- CE Broker – Online CE Education Audit

Mr. Heaberlin informed the Board members that, consistent with the 1-2% audit requirement, 335 audits were conducted. He provided an overview of the time-consuming process and indicated the current audit will cost the Board approximately \$4,000.00. The Board was then queried as to whether it believes that all licensees should be required to document their CME on the Physician Profile System or on some other online system. Dr. Harp stated that having licensees maintain their activity on a web-based system would give the public access to the information and also facilitate 100% audit capability.

The consensus of the Board was not to require practitioners to maintain their CME online.

Dr. Ali moved to forward this item to the Legislative Committee for consideration of elimination of the 1-2% audit and determine a statistically balanced number. The motion was seconded and carried unanimously.

- Duplicate Wall Certificates

Mr. Heaberlin explained that in order for a practitioner to obtain a duplicate wall certificate, he/she must submit a notarized application. He pointed out that a practitioner has the ability to request duplicate licenses as often as they like without providing a notarized application; therefore he is asking the Board to consider a change in the process.

Dr. Ali moved to amend the Application for Duplicate Wall Certificate by discarding the notarization requirement. The motion was seconded and carried unanimously.

As an aside, Dr. Reynolds suggested that the Executive Committee review the fee schedule for the Board to determine if adjustments need to be made to cover the actual processing cost for each of the services provided.

## **DISCIPLINE REPORT**

Ms. Deschenes deferred her report to accommodate the following summary presentation.

## **SUMMARY RESTRICTION PROCEEDING**

Pursuant to Section 54.1-2408.1(B) of the Code of Virginia, a quorum of the Virginia Board of Medicine met to receive and act upon information indicating that the following practitioner may have violated certain laws and regulations relating to the practice of medicine in the Commonwealth of Virginia. Pursuant to its authority under Section 54.1-2408.1(B) of the Code, the Board concluded that a substantial danger to the public health or safety warrants restriction of the license to practice medicine and surgery in the Commonwealth of Virginia for the following practitioner:

Corrie Wolfe and LaTonya Hucks presented the case on J. Weaver, MD. Dr. Dunnivant moved to restrict as requested by Ms. Wolfe. Dr. O'Connor seconded. The motion carried unanimously.

## **APPOINTMENT OF AN AD HOC COMMITTEE ON MIXING, DILUTING OR RECONSTITUTING**

Dr. Reynolds appointed Dr. Ali, Dr. Conklin and Dr. Lee, all volunteers, as members of the Ad Hoc Committee on MDR.

## **SELECTION OF THE NOMINATING COMMITTEE**

Dr. Mackler, Dr. Clements, Dr. O'Connor, and Dr. Farquhar volunteered to serve on the Nominating Committee. The Committee will meet on the morning of June 18, 2015 and present its slate of officers to the Board for consideration later that morning.

## **REMINDERS PAGE**

Travel vouchers for today's meeting should be submitted no later than March 23, 2015.

## **ANNOUNCEMENTS**

No announcements.

**Adjournment:** With no other business to conduct, the meeting adjourned at 12:53 p.m.

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Wayne J. Reynolds, DO  
President, Chair

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William L. Harp, MD  
Executive Director

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Colanthia M. Opher  
Recording Secretary