

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

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October 18, 2018

Department of Health Professions

Henrico, VA 23233

**CALL TO ORDER:** Dr. Tuck called the meeting to order at 8:40 a.m.

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

**MEMBERS PRESENT:** Ray Tuck, DC, Vice-President  
Lori Conklin, MD, Secretary-Treasurer  
Syed Ali, MD  
David Archer, MD  
James Arnold, DPM  
Manjit Dhillon, MD  
Alvin Edwards, PhD  
David Giammittorio, MD  
Jane Hickey, JD  
L. Blanton Marchese  
Jacob Miller, DO  
Karen Ransone, MD  
Brenda Stokes, MD  
David Taminger, MD  
Svinder Toor, MD  
Kenneth Walker, MD  
Martha Wingfield

**MEMBERS ABSENT:** Kevin O'Connor, MD, President

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Colanthia M. Opher, Deputy Executive Director, Administration  
Barbara Matusiak, MD, Medical Review Coordinator  
Cheryl Clay, Administrative Assistant  
Daniel Carey, MD, Secretary of Health and Human Resources  
David Brown, DC, DHP Director  
Barbara Allison-Bryan, MD, DHP Deputy Director  
Lisa Hahn, DHP Chief Operating Officer  
Erin Barrett, JD, Assistant Attorney General

**OTHERS PRESENT:** A. Rose Rutherford, VAPA  
Scott Johnson, JD, MSV  
Sara Heisler, JD, VHHA

Richard Grossman, VCNP  
Becky Bowers-Lanier, VATA

### **WELCOME TO NEW BOARD MEMBERS**

Dr. Tuck welcomed Board members appointed since the June meeting. He asked Mr. Marchese, Dr. Dhillon, Dr. Arnold, Dr. Ransone and Dr. Stokes to introduce themselves to their colleagues on the Board.

### **EMERGENCY EGRESS**

Dr. Conklin provided the emergency egress procedures for Conference Room 2.

### **APPROVAL OF THE JUNE 14, 2018 MINUTES**

Dr. Edwards moved to approve the minutes as presented; the motion was properly seconded and carried unanimously.

### **ADOPTION OF THE AGENDA**

Dr. Harp requested that the agenda be amended to include the Advisory Board on Radiologic Technology minutes from October 3, 2018 and an updated Chart of Regulatory Actions. Dr. Edwards moved to accept the agenda as amended; the motion was properly seconded and carried unanimously.

### **COMMENTS FROM DANIEL CAREY, MD, SECRETARY OF HEALTH AND HUMAN RESOURCES**

Dr. Brown introduced Dr. Carey and said, that from his point of view, Dr. Carey is the right person at the right time to hold the position that he has, especially with so many healthcare issues that require collaboration amongst the agencies.

Dr. Carey told the Board members it was an honor to visit with them and that he has a lot of respect for the work the Board does. He noted that he also knows what it's like to be investigated. Although there were no findings, he understands the anxiety and vulnerability that a licensee experiences during an investigation. He remembers distinctly that the process was fair, and he appreciates the time and work that goes into ensuring the safety of the public.

Dr. Carey stated that one of the highest compliments he receives is when a stakeholder acknowledges the collaboration between agencies. He said that it is his honor to work with such talented agency heads like Dr. Brown, who is a consigliere that has taken other agency heads under his wing to help them develop leadership skills.

Dr. Carey noted that there are 5 priorities on the front burner for HHR at this time. 1) Medicaid expansion and implementation, 2) Behavioral Health and Developmental Services, 3) all addictions, 4) women's health, and 5) women's health care services. He closed by saying that there is more to come and he expects the Board to hold him accountable for the results.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Annie Rose Rutherford of the Virginia Academy of Physician Assistants said that she had submitted comments regarding proposed changes to the Physician Assistant regulations. She said that she would be available to the Board to answer any questions if need be.

### **DHP DIRECTOR'S REPORT- Barbara Allison-Bryan, MD**

Dr. Allison-Bryan welcomed the new Board members and said that when she was in their place, she would remind herself how special it was to be on the Board. She shared 3 points, beginning with when present at the Board, you are not acting as part of any other professional society. Many times the mission of other professional organizations may overlap with that of the Board, but many times it does not. DHP and the Board's mission is to make Virginia healthcare safe, so watch which hat you're wearing and where your allegiance lies as a Board member.

Secondly, be aware of what's going on in the emergency rooms of the hospitals where you work. Over the summer, Virginia launched the Emergency Department Care Coordination Program and all hospitals across the Commonwealth are now connected electronically. This system provides patient history information and allows real-time communication between healthcare facilities, which is a great tool for practitioners.

Lastly, Board member training day held annually is being replaced with educational modules designed to be pertinent to each board and their specific needs. Some of the topics are board member etiquette, probable cause, Conflict of Interest, Freedom of Information Act, Characteristics of an Effective Board Member, chairing an effective meeting, etc. Dr. Allison-Bryan stated that some of these modules are interactive and are currently available to internal staff only.

Dr. Tuck encouraged the members to pass along any topics they would be interested in having developed into a training module.

Lisa Hahn provided an update on the report from law enforcement regarding building security and advised that the preliminary recommendations are being reviewed.

Several members of the Board expressed their concern about the decision to no longer issue access badges. Comment was offered that besides being impractical, if safety of the Board members was a concern, then some thought needed to be given to avoiding Board members entering through the same door with respondents who may be upset. Ms. Barrett shared the same concern and pointed out that there are benefits to Board members coming through another door. She asked if delegation to the Department of General Services for the management of badges would address the issue.

Ms. Hahn indicated that would not address the issue of the Board's accountability for the badges.

Dr. Allison-Bryan informed the members it was recently discovered that DHP was the only state agency that issued board member badges. She advised that members in other agencies performing similar regulatory processes have been successfully working without badges, but she is keenly aware that this change will be more inconvenient to the Board of Medicine. She stated that options that will be beneficial for everyone

are being considered.

Ms. Hahn concluded her report by advising that DHP's sister agency, Department of Professional and Occupational Regulation, recently went through a operational efficiency survey. DHP will make a concerted effort to look at the report and see if there are lessons to be learned.

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

### **PRESIDENT**

Dr. Harp advised that he will provide Dr. O'Connor's report throughout the meeting.

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

Dr. Tuck had no report.

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

Dr. Conklin had no report.

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

#### **Reports**

Dr. Harp briefly reviewed the Board's cash balance, Quarterly Case reports, License Counts, HPMP Participation, Enforcement and APD Reports.

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

### **Federation of State Medical Boards (FSMB) Call for Nominations**

Dr. Harp asked Dr. Tuck to recognize Dr. Walker for this FSMB item. Dr. Walker, a member of the FSMB Nominating Committee, explained what the FSMB is and its functions. He encouraged the Board members to consider serving on committees and could express their interest to him or Dr. Harp.

### **Conversion Therapy**

Dr. Harp reported that, at the behest of the General Assembly, Dr. Brown convened a Conversion Therapy workgroup on October 5<sup>th</sup> that Dr. O'Connor and he attended. Delegate Hope and Senator Chase were present. Dr. Harp noted that the meeting was well-attended and that public comment was passionate and sincere. He referred to a letter from Senator Scott Surovell to Dr. Brown which stated "Conversion therapy is a dangerous and discredited practice aimed at changing a person's sexual orientation or gender identity. Numerous health associations, including the American Psychiatric Association, the American Psychological Association, the American Counseling Association, the National Association of Social Workers, the American Academy of Pediatrics, and the American Association for Marriage and Family

Therapy deem conversion therapy a harmful and ineffective practice. Gay and transgender youth who are subjected to conversion therapy face traumatic consequences such as depression, low self-esteem, substance abuse, and even suicide.” Dr. Harp pointed out that Senator Surovell and Delegate Hope are asking that the practice of conversion therapy be defined as unprofessional conduct in the regulations of the healthcare boards in DHP.

## **COMMITTEE and ADVISORY BOARD REPORTS**

Dr. Ransone moved to accept all the minutes en bloc. The motion was seconded and carried.

## **OTHER REPORTS**

### **Board Counsel**

Erin Barrett, AAG introduced herself to the new Board members, explained her role, and provided an update on the status of the following cases:

Clowdis v. Virginia Board of Medicine

Merchia v. Virginia Board of Medicine

Garada v. Virginia Board of Medicine

### **Board of Health Professions**

Dr. Harp reported that licensure of art therapists has been recommended by the Board of Health Professions.

### **Podiatry Report**

Dr. Arnold had no report.

### **Chiropractic Report**

Dr. Tuck had no report.

### **Committee of the Joint Boards of Nursing and Medicine**

Dr. Harp reported that the Board of Nursing and the Committee of the Joint Boards accepted the Board of Medicine’s recommendation of 9,000 hours in 5 years for nurse practitioners to qualify for autonomous practice.

Dr. Walker and Ms. Barrett confirmed that the Board of Medicine will still be involved in the disciplinary process for autonomous nurse practitioners.

**Break**

Dr. Tuck called for a 15-minute break; the meeting reconvened at 10:26 a.m.

**New Business:**

**1) Regulatory and Legislative Issues**

In Ms. Yeatts absence, Dr. Harp presented the Regulatory and Legislative issues for the Board.

- **Chart of Regulatory Actions**

Dr. Harp briefly reviewed the Chart of Regulatory Actions as of October 15, 2018. This report was for informational purposes only and did not require action.

- **Final Regulatory Action on Prescribing of Opioids and Buprenorphine by Nurse Practitioners**

Dr. Harp referred to the comments, summary of comments, and copy of the proposed regulations with suggested amendments.

**MOTION:** After a brief discussion, Dr. Toor moved to adopt the final regulations as presented with the suggested amendments. The motion was properly seconded and carried unanimously.

- **Proposed Regulatory Action – Prescriptive Authority**

The NOIRA that was published for this action was done so with the idea that the Boards would likely repeal Chapter 40, Regulations for Prescriptive Authority for Nurse Practitioners, and the necessary provisions would be incorporated into a new Part in Chapter 30, Regulations Governing the Licensure of Nurse Practitioners. However, since there are two emergency actions amending Chapter 40 currently in process, staff recommends amending Chapter 40 by this action now. Then, when all actions (opioid regulations and autonomous practice) are completed, repeal Chapter 40 and incorporate provisions into Chapter 30, so there will be one regulatory source for nurse practitioners.

Ms. Barrett explained that currently nurse practitioners hold two licenses, one to practice and a separate one for prescriptive authority. This action would merge the two.

Dr. Harp said that he did not think this action would greatly affect revenues of the Board of Nursing.

**MOTION:** Dr. Ransone moved to adopt the proposed regulatory action with the proposed amendments. The motion was properly seconded and carried unanimously.

- **Periodic Review of Chapter 20: Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic**

Dr. Harp explained that the Legislative Committee had done the periodic review of Chapter 20 at its

September 7, 2018 meeting. The Committee made recommendations for edits and clarifications, but no substantive amendments. Dr. Harp also noted that no comments were received during the NOIRA period.

**MOTION:** After a brief discussion, Dr. Edwards moved to adopt, by fast-track action, the amendments to Chapter 20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic recommended by the Legislative Committee from its periodic review. The motion was properly seconded and carried unanimously.

- **Adoption of Fast-Track Action**

Dr. Harp advised that, during review of the regulations for all professions, it was noted that §54.1-2904. Biennial renewal of licenses, copies, fee, lapsed licenses; reinstatement, penalties, needed to be amended to comply with the Board's new statutory authority to e-mail notices (including renewal notices). As such, the proposed amendment to the regulations of all professions say "sent" instead of "mailed."

**MOTION:** Dr. Edwards moved to adopt the amended regulations as a fast-track action. The motion was properly seconded and carried unanimously.

- **Periodic Review of Chapter 150: Regulations Governing the Practice of Behavior Analysis**

Dr. Harp explained that, at the meeting of the Advisory Board for Behavior Analysis held October 1, 2018, the regulations were periodically reviewed pursuant to Executive Order 14. The Advisory Board reviewed and considered significant amendments recommended by the Association of Professional Behavior Analysts (APBA) to defer licensure, renewal and ethical standards to the Behavior Analyst Certification Board (BACB). After much discussion, the Advisory Board recommended an amendment to require maintenance of current certification with BACB for renewal of licensure. The vote was 3-2 with the MD member and the citizen member voting nay.

Ms. Deschenes stated that this topic comes up frequently with the advisory professions, especially when they've been part of a national organization prior to licensure. However, it is rare for an outside entity to be part of our renewal process.

**MOTION:** Dr. Tuck called for a motion to adopt a Notice of Intended Regulatory Action to require licensed behavior analysts and licensed assistant behavior analysts to maintain board certification with the BACB in order to renew or reinstate a license. No motion was made; no action was taken.

- **Adoption of Fast-Track Action – Acupuncture regulations**

Dr. Harp explained that the Advisory Board on Acupuncture conducted a periodic review of the regulations on October 3, 2018, and there were two amendments recommended:

- 1) Amendment to the name of the Point Location examination to be consistent with the new name used by the national examination, and
- 2) Clarification in the section on the use of vitamins, minerals and food supplements to include herbs and herbal supplements. The term "dietary supplements" used by the FDA is inclusive

of all those, so the recommendation is to amend the language to simply say “dietary supplements.”

Dr. Archer expressed some concern about the use of the term “dietary supplements”, as it encompasses drugs like melatonin and other compounds. Additionally, it describes other **potential harmful drugs**.

Dr. Harp pointed out that acupuncturists can’t prescribe, but patients can purchase these “dietary supplements” over the counter. If used responsibly, they should not be harmful.

**MOTION:** Dr. Edwards moved to adopt the amended regulations as a fast-track action. The motion was 16-1 with Dr. Archer opposing.

- **Adoption of Fast-Track Action – Athletic Training (AT) regulations**

Dr. Harp explained that the Advisory Board on Athletic Training conducted a periodic review of the regulations on October 4, 2018. In the meeting, the question was raised by public comment about the meaning of the requirement for “direction” by a physician. Direction is specified in the statutory definition of the practice of athletic training but is not further defined in regulation.

Dr. Harp noted that the National Board of Certification for Athletic Training has recently adopted model language regarding direction. The definition of “direction” recommended by the Advisory Board is consistent with the model language and is consistent with current practice in accordance with the Virginia AT scope of practice which reads:

“Practice of athletic training” means the prevention, recognition, evaluation and treatment of injuries or conditions related to athletic or recreational activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility or substantially similar injury or condition resulting from occupational activity immediately upon the onset of such injury or condition; and subsequent treatment and rehabilitation of such injuries or conditions **under the direction of the patient’s physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry, or dentistry**, while using heat, light, sound, cold, electricity, exercise or mechanical or other devices.

The proposed amendments to the regulations would create a definition of “direction” as:

“Direction” means authorization by a doctor of medicine, osteopathic medicine, podiatry, chiropractic, or dentistry for care and treatment by a verbal order if the doctor or dentist is present or by written order, telecommunication, plans of care, protocols, or standing orders if the doctor or dentist is not present.

The second amendment is under Individual Responsibilities in the section on Standards of Practice.

An athletic trainer practices under the direction of the individual’s physician or under the direction of any doctor of medicine, osteopathy, chiropractic, podiatry or dentistry.

**MOTION:** After a brief discussion, Dr. Ransone moved to adopt the amended regulation as a fast-track action. The motion was properly seconded and moved unanimously.

- **Adoption of Fast-Track Action – Physician Assistant regulations**

Dr. Harp explained that the Advisory Board on Physician Assistants conducted a periodic review on October 4, 2018. The recommended amendments are to delete outdated language, primarily related to the changes in the law and regulations for prescriptive authority.

**MOTION:** Dr. Arnold moved to adopt the amended regulations as a fast-track action. The motion was properly seconded and carried unanimously.

Dr. Harp then asked the Board to consider an additional change to 18VAC85-50-115. Responsibilities of the physician assistant. He explained that a physician assistant is no longer required to submit a practice agreement to the Board for approval. The Board was asked to consider if a practice agreement with an alternate supervising physician still needed to be submitted to the Board. The proposed amendment would read:

**18VAC85-50-115. Responsibilities of the physician assistant.**

A. The physician assistant shall not render independent health care and shall:

1. Perform only those medical care services that are within the scope of the practice and proficiency of the supervising physician as prescribed in the physician assistant's practice agreement. When a physician assistant is to be supervised by an alternate supervising physician outside the scope of specialty of the supervising physician, then the physician assistant's functions shall be limited to those areas not requiring specialized clinical judgment, unless a separate practice agreement has been executed for that alternate supervising physician. ~~is approved and on file with the board.~~

**MOTION:** Dr. Toor moved to adopt the amended regulations as a fast-track action. The motion was properly seconded and carried unanimously.

**2) Guidance documents – Periodic Review**

Dr. Harp stated that like regulations, the Board's guidance documents were subject to periodic review. He briefly highlighted all the guidance documents identified for revision.

**MOTION:** Dr. Miller moved to adopt the recommended actions for all guidance documents as presented. The motion was properly seconded and carried unanimously.

**3) VCA – Request for Approval to Offer TYPE I CEs to Chiropractors**

Dr. Harp stated that the Virginia Chiropractic Association (VCA) seeks approval from the Board as a provider of Type 1 continuing education.

During the discussion, members had several questions, including why doesn't VCA go to its national organization to obtain this accreditation. Dr. Tuck explained that only teachers are certified through PACE, the continuing education arm of the Federation of Chiropractic Licensing Boards.

After a lengthy discussion, Dr. Ransone called the question.

**MOTION:** Dr. Ransone then moved to approve VCA as a provider of Type 1 continuing education for chiropractors. The motion was properly seconded; the vote was 10 ayes, 6 nays, and 1 abstention. The motion carried.

#### **4) Proposed Recommendations for Board Response to the Virginia Maternal Mortality Review Team**

Dr. Harp referred to a letter from Melanie Rouse, PhD, Maternal Mortality Projects Coordinator for the Office of the Chief Medical Examiner, with the following proposed recommendations for the Board of Medicine and DHP:

- 1- All healthcare providers licensed by the Board of Medicine be required to receive and maintain training through continuing medical education, in the contemporary management of chronic diseases in women of childbearing age within the scope of practice in their specialty.
- 2- All providers of care to women of childbearing age should be trained in and engage in Screening, Brief Intervention and Referral to Treatment (SBIRT) for substance abuse, mental illness, domestic violence and trauma at the initiation of care.
- 3- For DHP – Given that women with chronic diseases have worse outcomes during pregnancy and the postpartum period, we recommend that board certifiers promote and incentivize the use of established prescribed management algorithms for standards of care for the treatment of pregnant and postpartum women through required continuing medical education. These should include the management of hypertension, heart failure, and hemorrhage.

Dr. Harp then briefly reviewed his preliminary response and the article from the American College of Obstetricians and Gynecologists.

**MOTION:** After a brief discussion, Dr. Ransone moved to accept Dr. Harp's preliminary response as sufficient and that no further action was needed. The motion was seconded and carried unanimously.

#### **5) Licensing Report**

Dr. Harp informed the Board that the Licensure by Endorsement regulations went into effect September 5, 2018 and that the instructions and application are a work in progress.

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

#### **6) Discipline Report**

Ms. Deschenes went over the status of pending cases at the Board, APD and Enforcement levels. She also asked that Board members respond to Ms. Wood's request for 2019 informal conference dates.

Ms. Deschenes then presented a Consent Order for reinstatement from a mandatory suspension for an action taken by another state. Ms. Deschenes noted that Board staff recommends reinstatement with a reprimand.

**---FINAL APPROVED---**

Dr. Ransone moved that the license to practice medicine and surgery be reinstated with a reprimand. The motion was properly seconded and carried unanimously.

**7) Announcements**

Dr. Harp reminded Board members that communication with 1 other Board member is lawful. However, communicating with 2 other Board members at a time constitutes a meeting. He asked all to adhere to this guidance.

**8) Adjournment**

With no other business to discuss, Dr. Tuck adjourned the meeting of the Full Board at 11:59 a.m.

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Ray Tuck, Jr., DC  
President, Chair

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William L. Harp, MD  
Executive Director

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Colanthia Morton Opher  
Recording Secretary