--- FINAL APPROVED --

# VIRGINIA BOARD OF MEDICINE
# EXECUTIVE COMMITTEE MINUTES

Friday, April 13, 2018 | Department of Health Professions | Henrico, VA

**CALL TO ORDER:** The meeting convened at 8:33 AM.

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

**MEMBERS PRESENT:**
Kevin O'Connor, MD, President
Syed Salman Ali, MD
Jane Hickey, JD
Maxine Lee, MD
Nathaniel Tuck, Jr., DC, Vice-President

**MEMBERS ABSENT:**
Randy Clements, DPM
Lori Conklin, MD, Secretary-Treasurer
Alvin Edwards, MDiv, PhD

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

**OTHERS PRESENT:**
Gary Riddle, Indivior
W. Scott Johnson, JD, MSV
Richard Grossman, Vectre Corporation
Ryan LaMura, VHHA
James Pickral, Indivior

## EMERGENCY EGRESS INSTRUCTIONS

Dr. Tuck provided the emergency egress instructions.

## APPROVAL OF MINUTES OF DECEMBER 1, 2017

Dr. Tuck moved to approve the meeting minutes of December 1, 2017 as presented. The motion was seconded and carried unanimously.

## ADOPTION OF AGENDA

Dr. Harp requested that the agenda be amended to include consideration of changes to the FAQ's on the Prescribing of Buprenorphine for Addiction and the timeline for HB 793. Ms. Hickey moved to adopt the agenda as amended. The motion was seconded and carried unanimously.

## PUBLIC COMMENT

Gary Riddle of Indivior addressed the Committee and provided a brief description of Sublocade, an injectable buprenorphine formulation that has been approved by the FDA for the treatment of opioid use disorder. He also asked the Committee to consider updating the FAQ's to address prescribing concerns of practitioners.

## DHP DIRECTOR'S REPORT

Dr. Brown presented the agency's "to-do-list" from the 2018 Session of the General Assembly.
It included:

Is there a need to regulate and certify community health workers? Dr. Allison-Bryan will be heading up the effort to answer this question.

Reporting of dispensing to the PMP by federally-funded clinics. Although the bill did not pass, DHP has been asked to study the current federal laws and regulations and make recommendations to the Clerk of the Senate.

What, if any, legal and technological approaches could capture overdoses in emergency departments and create a report for the practitioner that issued the prescription?

Should there be a regulation prohibiting the practice of "conversion therapy" in minors? DHP will address this by a joint effort of the Boards of Medicine, Nursing and the Behavioral Science.

HB 621 requires the Board of Medicine to adopt regulations to notify practitioners that perform joint replacement surgery to inform patients of the risk of cobalt poisoning. Although the bill did not pass, the Chair of Health, Education and Welfare asked the Board of Medicine to disseminate information about this issue to its licenses.

SB 721 requires practitioners to provide patients of the anticipated cost of procedures at least 3 days in advance of the scheduled date. The bill did not pass, but the Chair of Education and Health asked that the Board of Medicine bring to its licensees' attention the current law regarding transparency about costs.

Dr. Brown spoke about the revamping of space at DHP. He noted that the first phase, moving some of the agency's business practices to the first floor, was complete. The second phase of relocating some boards on the 3rd floor is in full swing. On the issue of building

security, he said that Dr. Allison-Bryan and Lisa Hahn would be reviewing DHP's current procedures, as well as what other agencies and boards of medicine do.

Dr. Brown gave a recap of a recent opioid summit he attended at which the common theme was medication-assisted treatment (MAT). Stakeholders are seeking to expand the number of MAT providers who are waivered and able to prescribe buprenorphine. A workgroup will convene to discuss barriers, especially how to ensure those with waivers can feel comfortable integrating MAT into their practice.

Dr. O'Connor stated that only a 1/3 of those with waivers currently prescribe buprenorphine.

Dr. Conklin addressed the issue of reporting to the PMP. She said that currently there is no way for emergency physicians to input information about overdoses into the PMP. Dr. Brown responded that the overdose data may be available from VDH and perhaps could be migrated directly into the PMP.

Dr. Conklin remarked that the number one drug on the streets is mono-product buprenorphine. She said it might be wise to confer with specialist on how the mono-product issue can be addressed in the face of an increasing number of physicians writing the prescriptions.

## PRESIDENT'S REPORT

Dr. O'Connor advised the members of a new process for reviewing applications and noted that the members of the Credentials Committee will need to be more involved in the licensing process.

He announced that the Committee of the Joint Boards of Medicine and Nursing will meeting on May 17, 2018 to discuss draft regulations for the implementation of HB 793 which provides for the autonomous practice of nurse practitioners.

Dr. O'Connor noted that he looks forward to working with Susan Jones, MD, child psychiatrist, on the Conversion Therapy workgroup. He added that he and several other Board members will be attending the Federation of State Medical Boards' Annual Meeting in Charlotte, NC. He will provide a report at the full Board meeting in June.

## EXECUTIVE DIRECTOR'S REPORT

Revenue and Expenditures

Dr. Harp highlighted several direct and allocated expenditures, pointing out that the Board is 75% of the way through FY18 and is well within budget. He noted that for 2019-2020, 1 new FTE and 1 new P-14 have been requested to help achieve greater speed and accuracy in licensing and provide higher quality customer service.

Dr. Brown commented on the constraints the agency has in filling positions. Even though DHP operates with no general funds, there is still accountability to the General Assembly. However, over the last couple of years, DHP has been successful in obtaining full-time employee positions (FTE's). He said that DHP was successful in getting more staff for the Board of Pharmacy to register physicians and patients involved with cannabidiol oil or THC-A oil. In the past several years, as DHP's employment level has grown, the majority of FTE's have gone to Enforcement and APD to help deal with the growing numbers of complex opioid cases.

Dr. Brown pointed out that the agency's reliance on contract/temporary employees has increased over the years. However, when these individuals gain valuable experience, they oftentimes move on to full-time jobs. He stated that he would continue to advocate for ways to create full-time positions, and that the Board of Medicine is on the list.

Enforcement, APD, HPMP Reports

Dr. Harp briefly reviewed the Enforcement and APD utilization reports and noted that the increase in investigative and case prep hours is due to the complexity of the cases. He said the number of participants in HPMP has increased to 117.

Dr. Brown informed the Committee that he is working with our HPMP vendor to raise awareness of the program's existence.

**NEW BUSINESS**

Regulatory Actions

Ms. Yeatts guided the Committee through the Report of the 2018 General Assembly session highlighting **HB 793 Nurse practitioners: practice agreements, HB 1251 CBD oil and THC-A oil: certification for use, dispensing**, **SB 632 Controlled substances: limits on prescriptions containing opioids, SB 983 Prescription Monitoring Program: adds controlled substances included in Schedule V and naloxone,** and **SB 882 Prescriptions refill: protocol.**

Ms. Yeatts informed the Board that after July 1, 2018 it will need to amend regulations in order to be consistent with **HB 1524 Health record retention: practitioners to maintain records for a minimum of six years.**

This report was for informational purposes only.

Chart of Regulatory Actions

Ms. Yeatts reviewed the status of pending regulatory matters.

This report was for informational purposes only.

Final Regulations of Licensure by Endorsement

Ms. Yeatts referred to the proposed regulations for licensure by endorsement in the packet. She said that a public comment period was open from January 8, 2018 to March 9, 2018 as well as a public hearing conducted on February 15, 2018. No comment has been received.

Ms. Yeatts stated that Mr. Heaberlin has identified a potential issue with 18VAC85-20-141. (3) Licensure by endorsement, which says:

Verify that all licenses held in another United States jurisdiction or in Canada are in good standing, defined as not currently under investigation and if lapsed, eligible for renewal or reinstatement.

Mr. Heaberlin states that other jurisdictions may not divulge pending investigations.

Ms. Hickey asked whether the license application included a question that required the applicant to answer if they were under investigation.

Dr. O'Connor confirmed that there are questions addressing pending/investigations, and the applicant is required to provide that information.

Dr. Harp advised that in order to be eligible for this track, the applicant would have to have had no disciplinary actions in any state regardless of the time span.

Dr. Lee asked if a practitioner practicing in another country with an unrestricted license is eligible for licensure by endorsement.

Dr. O'Connor said that licensure by endorsement is for low-risk applicants, and that out-of-country practitioners would be eligible unless there were questionable actions on their record, then the application would go through the standard licensing process.

After discussion, the members agreed to amend this section as follows:

Verify that all licenses held in another United States jurisdiction or in Canada are in good standing, defined as current and unrestricted, or if lapsed, eligible for reinstatement.

MOTION: Dr. Ali moved to adopt the proposed regulations with the stated amendment. The motion was seconded and carried unanimously.

Consideration of changes to FAQs for Prescribing Buprenorphine for Addiction

Dr. Harp reviewed the current regulations on the treatment with buprenorphine for addiction. To provide greater clarity, he proposed the following amendment to FAQ #1 – **Can I continue to prescribe mono-product for my patients that have a demonstrated intolerance to naloxone-containing products?**

The amended emergency regulations that became effective August 24, 2017 read as follows: *For patients who have a demonstrated intolerance to naloxone; such prescriptions for the mono-product shall not exceed 3% of the total prescriptions for buprenorphine written by the prescriber, and the exception shall be clearly documented in the patient's medical record*. So 3% of buprenorphine prescriptions for off-site administration can be for mono-product, and the rest must be for naloxone-containing products. The proposed change to FAQ #1 would read: The 3% restriction does not apply to injectable formulations of buprenorphine mono-product administered directly to patients in a waivered physician's office, a clinic staffed by a waivered provider, or in a federally licensed opioid treatment program, or to mono-product tablets administered directly to patients in federally licensed opioid treatment programs.

The Committee agreed that the proposed amendment would provide the needed clarification. Board staff will make the necessary changes and have the updated document posted immediately.

Timeline for HB 793

Ms. Yeatts informed the members that the Joint Boards of Medicine and Surgery had already met and discussed HB 793. A general notice outlining the plan for adoption of regulations will be circulated soon. On May 17th the Joint Boards, in conjunction with its Advisory Committee, will function as a Regulatory Advisory Panel to develop draft regulations. The draft regulations will be posted for public comment prior to their going to the Board of Nursing and the Board of Medicine for further review.

The plan is for Nursing to adopt the emergency regulations in July and the Board of Medicine to review for adoption in August. If there is not a consensus between the two Boards, there will be another opportunity to look at any variances and adjust the language.

These regulations must be approved by January 2019.

Dr. Brown stated that this process took up a lot of time and that Ms. Yeatts was called upon to review multiple drafts from the stakeholders. From the technical side, he doesn't think there are any obstacles to implementation.

**ANNOUNCEMENTS**

The next meeting of the Committee will be August 2, 2018 at 8:30 a.m.

**ADJOURNMENT**

With no additional business, the meeting adjourned at 9:37 a.m.

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| Kevin O'Connor, MD | William L. Harp, MD |
| President, Chair | Executive Director |

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Colanthia M. Opher
Recording Secretary