--- FINAL APPROVED --

# VIRGINIA BOARD OF MEDICINE
# EXECUTIVE COMMITTEE MINUTES

Friday, August 3, 2018 Department of Health Professions Henrico, VA

**CALL TO ORDER:** Dr. O'Connor called the meeting to order at 8:32 a.m.

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

**MEMBERS PRESENT:**
Kevin O'Connor, MD, President
Nathaniel Tuck, Jr., DC, Vice-President
David Archer, MD
Alvin Edwards, MDiv, PhD
Jane Hickey, JD
Kenneth Walker, MD

**MEMBERS ABSENT:**
Syed Salman Ali, MD
Lori Conklin, MD, Secretary-Treasurer

**STAFF PRESENT:**
William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Director, Discipline
Colanthia Morton Opher, Deputy Director, Administration
Barbara Matusiak, MD, Medical Review Coordinator
David Brown, DC, DHP Director
Barbara Allison-Bryan, MD, DHP Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

**OTHERS PRESENT:**
Kurt Elward, MD, President, MSV
Ralston King, MSV
W. Scott Johnson, JD, MSV
Cynthia Fagan, VCNP
Morgan McDowell, VCNP
Mary Baker, VCNP
Brekk MacPherson, VCNP
Rebekah Compton, VCNP
Richard Grossman, VCNP
Ryan LaMura, VHHA
Sara Heisler, VHHA
Aimee Perron Seibert, VA College of Emergency Physicians
Del Bolin, VAFP & VCOM
Hunter Jamerson, VAFP
Rosie Taylor-Lewis, VCNP
Sam Bartle, MD, VA Chapter, American Academy of Pediatrics

## EMERGENCY EGRESS INSTRUCTIONS

Dr. Tuck provided the emergency egress instructions.

## APPROVAL OF MINUTES OF APRIL 13, 2018

Dr. Edwards moved to approve the meeting minutes of April 13, 2018 as presented. The motion was seconded and carried unanimously.

## ADOPTION OF AGENDA

Dr. Tuck moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

## PUBLIC COMMENT

Prior to opening the floor for comment, Dr. O'Connor announced that the comment period for the Regulations for Autonomous Practice by Nurse Practitioners had closed. No comment would be received at this meeting on the NP regulations.

There was no public comment.

## DHP DIRECTOR'S REPORT

Dr. Brown gave a quick summary of projects that Dr. Allison-Bryan has been working on over the past several months. He stated that, as Chief Deputy, she has increased the bandwidth of the Director's office. He noted that Dr. Allison-Bryan came into the position with a strong background on the opioid crisis, its challenges and the opioid regulations. She has continued her work on the crisis with other agencies and the Deputy Secretary. He noted Dr. Allison-Bryan's strong presentation abilities, as acknowledged by the correspondence from Carilion in the agenda packet. Additionally, she has been involved with reviewing and developing security measures for the agency.

Dr. Allison-Bryan gave an update on the work that she's been doing with the Henrico Police and the Virginia State Police to address safety issues and security concerns for the building, personnel and the public. She acknowledged that the work performed by the Board members can be very threatening, especially when the respondent's livelihood hangs in the balance. She stated that they had completed one walk-through and discussed placement of security cameras to create a safer work environment.

Dr. Allison-Bryan informed the members about the launch of Virginia's Emergency Department Care Coordination (EDCC) Program and stated that every physician will be touched by it. As of June 30th, all 122 emergency departments across Virginia were connected, giving them the ability of near real-time communication and collaboration among health care providers. Dr. Allison-Bryan added that when a patient presents to the ER, a NarxCare ribbon will appear with the patient's EMR and PMP history, providing an abuse risk score. NarxCare should be helpful in identifying potential drug misuse and abuse.

Dr. Allison-Bryan also spoke to the interoperability and integration of the PMP and noted that Virginia is up to 30 states and counting. The Commonwealth has a model PMP and, in conjunction with the Department of Health, will be producing 5 short videos that will provide an important resource to the deans of medical schools. Updates on this effort will be provided as the project progresses.

## PRESIDENT'S REPORT

Dr. O'Connor reported that the licensing of art therapists is under consideration by the Board of Health Professions. A decision will be made at the next BHP meeting.

## EXECUTIVE DIRECTOR'S REPORT

### Revenue and Expenditures

Dr. Harp reported that the Board is solid in its budgeting, revenues, and expenditures. He stated that the Board has voted to reduce renewal fees across all professions for the last three biennia.

### Committee Appointments

Dr. Harp announced the appointment of new Board members.

- James Arnold, DPM of Winchester succeeding Randy Clements
- Manjit Dhillon, MD, succeeding David Taminger in the 4th District
- L. Blanton Marchese of Chesterfield, succeeding James Jenkins as citizen member
- Karen Ransone, MD succeeding Barbara Allison-Bryan in the 1st District
- Brenda Stokes, MD succeeding Maxine Lee in the 6th District
- David Taminger, MD succeeding Ike Koziol in the 7th District

### Committee Appointments

Dr. Harp reviewed the appointments to the Executive, Legislative and Credentials Committees. He noted that all new Board members start out on Credentials. However, Dr. Ransone, with her experience as a past president of the Board of Medicine, has been appointed to the Legislative Committee.

### Letter from Dr. Koziol

Dr. Harp read to the Committee Dr. Koziol's letter regarding his decision to resign from the Board. Dr. Koziol had very kind words for his colleagues at the Board.

### Letter from Virginia Tech Carilion

Dr. Harp said that he would like to follow up on Dr. Brown's kudos to Dr. Allison-Bryan; she was a hit at Carilion. Dr. Clements, former podiatrist on the Board, helped facilitate participation in Carilion's Grand Rounds for faculty and housestaff, as well as the incoming residents'

orientation. Dr. Allison-Bryan and Dr. Harp were impressed with what the school is doing to educate students, residents, faculty and staff, not only about opioids, but all areas of medicine.

Case Review

Dr. Harp announced that Dr. Matusiak is requesting the assistance of any available Board members for probable cause review after the meeting.

**NEW BUSINESS**

Chart of Regulatory Actions

Ms. Yeatts reviewed the Chart of Regulatory Actions as of July 17, 2018.

She reported that the final Regulations Governing Prescribing of Opioids and Buprenorphine will go into effect August 8, 2018. The Licensure by Endorsement regulations will go into effect September 5, 2018.

This report was for informational purposes only.

Regulatory Action – Adoption of Exempt Actions to conform to changes in the Code of Virginia

Polysomnographic Technologists

Ms. Yeatts reviewed the legislation passed by the 2018 General Assembly and the proposed amendments to conform the regulations to the changes in the Code for polysomnographic technologists.

**Part II - Requirements for Licensure as a Polysomnographic Technologist**

A student enrolled in an educational program in polysomnographic technology or a person engaged in a traineeship from the practice of polysomnographic technology, provided that such student or trainee is under the direct supervision of a licensed polysomnographic technologist or a licensed doctor of medicine or osteopathic medicine.

1. Any such student or trainee shall be identified to patients as a student or trainee in polysomnographic technology.
2. Such student or trainee shall be required to have a license to practice after 18 months from the start of the educational program or traineeship or six months from the conclusion of such program or traineeship, whichever is earlier.

**MOTION:** Dr. Edwards moved to adopt the new section as presented such that the regulations conform to the language of the law. The motion was seconded and carried unanimously.

Surgical Assistants

Ms. Yeatts reviewed the legislation passed by the 2018 General Assembly and the proposed amendments to conform the regulations to the changes in the Code for surgical assistants.

**18VAC85-160-60-Renewal of registration for a surgical assistant**

A surgical assistant who was registered based on a credential as a surgical assistant or surgical first assistant issued by the National Board of Surgical Technology and Surgical Assisting, the National Surgical Assistant Association, or the National Commission for the Certification of Surgical Assistants or their successors shall attest that the credential is current at the time of renewal.

**MOTION:** Dr. Edwards moved to adopt the new language as presented so that the regulations conform to the language of the law. The motion was seconded and carried unanimously.

Regulatory – Emergency Action on regulations for autonomous practice for nurse practitioners

Dr. O'Connor introduced the topic by advising that "the law is the law" and the Regulatory Advisory Panel and the Board of Nursing have vetted the language that is now before the Committee. At this time, the Board of Medicine's responsibility is to craft, with some specificity, the definition of full-time employment.

Ms. Yeatts explained the regulatory process and said that the Board of Nursing has already adopted the draft regulations in the packet; the Board of Medicine can adopt as them as presented or consider amendments. If there are proposed amendments, they would be revisited at the next meeting of the Board of Nursing and at the October Board of Medicine meeting.

Ms. Yeatts walked the members through the proposed regulations and the following summary of the public comment.

---

**SUMMARY – PUBLIC COMMENT ON 5-17-17 DRAFT NP REGS (HB793)**

**Virginia Healthcare Foundation**

- Encourage a regulatory approach for transition to practice that does not exceed a total of 5 years of collaboration for an NP who is licensed in more than one specialty area (category)
- Customized/individualized approach when reviewing applications - Develop a framework for review when considering each NP's individual level of training, credentials and work experience

- Wants a system that promotes NP's adding an additional licensure category, especially for categories that are needed to expand access to care, such as Psych MHNP

**Medical Society of Virginia**

- 10,000 hours – ½ the time a medical resident practices in 5 years
- 2nd specialty attestation – limit past hours to 10% (or 1,000 hours)
- Detail needed re "specialty area and/or patient population must be aligned" between patient care team physician and NP while under practice agreement – Specialty crosswalk provided
- Adherence to National *Specialty* Certifications
- Prescribing Limitations – proper/education/training and experience prior to prescribing
- Attestation – Give physician the option to provide a rationale for their refusal to sign
- Core Competencies – nothing in the draft that ensures an NP has achieved the basic competencies for autonomous practice – Robust standard needed to define competencies

**Virginia Academy of Family Physicians**

- Shares MSV concerns
- 2,000 year/10,000 total hours – same as MSV
- Patient population and specialty/category alignment – regulations need to spell out how aligned while under the collaborative Practice Agreement – same as MSV
- Prescribing Limitations – same as MSV
- Attestation – same as MSV
- Guidance document identifying the core competencies that should be met prior to autonomous practice

**Virginia Hospital and Healthcare Association**

- Definition of FT experience – supports 1,600 year/8,000 total hours
- Content of attestation – supports an approach that limits the attestation to those elements required by the statute
- Other evidence – provide examples of other evidence that would demonstrate applicant met requirements

**UVA Health System**

- Multiple Attestations – Paragraph D 18VAC90-30-86 is confusing—"If the hours of practice are applicable to the patient population and in practice areas included within each of the categories of licensure and certification, those hours may be counted towards a 2nd attestation."
    - Possible Interpretations: 5 years in each attestation area, or one 5-year period could apply concurrently for each attestation area. Clarity needed. Maybe a minimum amount of time?
    - Suggest open-ended question on attestation form to describe the populations and practice areas worked
    - Specify patient population and practice area on the license

  - System to share information with hiring entities and credentials by secure electronic means

- Licensure by endorsement –
  - Virginia doesn't currently issue a separate RN license to nurses with multistate privilege. Can a RN with multi-state privilege be the basis for issuing an autonomous NP license?
  - Will NP under supervision in another state impact endorsement?
- Practice Agreements – Provides editorial changes to 18VAC90-30-120 A & C (page 2 of letter)
- Consider substituting "independent" for "autonomous", i.e. "licensed independent practitioners"

**American Academy of Pediatrics**

- Amendment: "While a party to such practice agreement, the patient care team physician routinely practiced with a patient population *and in a primary care or specialty practice area* included within the category, as specified in 18VAC90-30-70 . . ."
- Reverse FT – should be 2,000/10,000 hours
- NPs need to show proficiency before they transition – need for ongoing competency and how that is measured, i.e. continuing education

**Virginia College of Emergency Physicians**

- 5 years FT should be 2,000 year/10,000 total hours
- Specifications for MD specialty and NP licensure – "patient population" is not clear enough Acute/emergent/primary/chronic/preventative? Clear guidelines needed
- Requesting an amendment with same verbiage as American Academy of Pediatrics re: primary/specialty practice
- Attestation of 5 years – clear, objective, and reproducible – NP's need board certification exams like those of MD's

**80 Letters from Physicians/Medical Students**

- Same as MSV list of 6 areas of concern

**70 other commenters (numerous NP's) in support of current regulations** – no further barriers to practice – support regulations as recommended by the RAP

---

Dr. O'Connor advised that he, Dr. Conklin, and Dr. Mackler were the only physicians on the RAP, which enjoyed a robust discussion that covered all the topics in the summary. The members of the RAP agreed with the dual hours, but where the rubber met the road was with the 5-year requirement.

Dr. Archer said that his concern is with the attestation and its validity. He said that in a residency, you have years of opportunity to evaluate a practitioner's competency. With the nurse

practitioner, there doesn't appear to be anything substantial, therefore it is not a quantitative approach.

Ms. Yeatts stated that, first, the nurse practitioner's competency is established when they are issued a license to practice. They would have had to provide adequate proof of examination, national credentialing, board certification, to be jointly licensed by the Board of Medicine and Nursing. Second, there is nothing in the law that requires a patient care team physician to attest to the nurse practitioner's competency.

Dr. Archer stated that, when a student graduates from medical school, he/she serves a 1 year internship, followed by 3-5 years in a residency/fellowship program. All along the way, his/her clinical knowledge is being assessed by multiple physicians. So why aren't the nurse practitioners held to the same standard? He would like some objective documentation that they are competent.

Ms. Barrett said that ship has sailed. The General Assembly has already determined what the physician and nurse practitioner can do, and there is no option to go beyond it. As per the law, the physician and nurse practitioner are limited to:

> (i) that the patient care team physician has served as a patient care team physician on a patient care team with the nurse practitioner pursuant to a practice agreement meeting the requirements of this section and § 54.1-2957.01; (ii) that while a party to such practice agreement, the patient care team physician routinely practiced with a patient population and in a practice area included within the category for which the nurse practitioner was certified and licensed; and (iii) the period of time for which the patient care team physician practiced with the nurse practitioner under such a practice agreement.

Dr. Walker asked if it would be advantageous to go through each of the comments listed in the summary.

Dr. O'Connor said that the Committee has that option. However, what's on the table is the total number of hours per week that constitutes Full-Time, and what constitutes 5 years of training.

Dr. Walker asked whether the Committee has the ability to substitute "independent" for "autonomous".

Dr. Allison-Bryan said that there is no correct word. Independent implies that you work alone, and autonomy is a matter of substance.

Dr. Walker said that if we are unable to make any other changes to the regulations, then he withdraws his question.

Dr. Brown noted that the public comment covered many things. And though there is no need to discuss every comment, if a concern strikes a chord, it should be identified for discussion.

In the same vein, there should be some hesitancy to set a precedent to discuss all comments for any issue.

Dr. O'Connor stated that the battle was lost when the Governor signed the bill.

Ms. Barrett reminded the members that this might not be the last time these draft regulations come before the Board of Medicine. She said that both Medicine and Nursing must adopt the same regulations. But if that does not happen, they will bounce between the two boards until a version or compromise that each can live with is adopted.

Dr. O'Connor said that if the regulations were accepted as presented today, then the emergency regulations are done. The definition of 5 years as noted in the regulations and ability to do cross-attestation would be fixed.

Ms. Hickey asked if the number of hours could be supplemented over more than a 5-year span.

Ms. Yeatts stated that the rationale for the number of hours being considered is based on the fact that, in a hospital setting, 32 hours per week is viewed as full-time. That equates to 1,600 work hours a year, accounting for 2 weeks off.

Ms. Hickey clarified that, if the proposed hours were changed to 40 hours weekly and the nurse practitioner worked 35 hours, they would be required to work 5 ½ years to accomplish the total number of hours required before being able to practice autonomously. She felt that those parameters were acceptable.

Dr. O'Connor said that the physicians on the RAP felt strongly that 40 hours should be the requirement; however, there was no spirit of compromise from other members of the Panel.

Dr Archer agreed that 5 years is arbitrary, but adequate; it is full-time employment. He said that he didn't think that 32 hours per week was enough, and 40 may be too much to ask. He said that 36 should be the logical option.

Dr. O'Connor stated that an offered compromise was rejected. Neither the physicians, nor the nurse practitioners were happy, so it was probably the right choice.

Dr. Tuck agreed.

Dr. Archer said while there's an agreement that the average number of work hours is 2,000 per year, no one works that.

Dr. Walker said that 5 years isn't sufficient, and 10 years is way too much. Personally, he can live with something between 6-10 years.

Dr. O'Connor advised that 9,000 hours is five years.

Dr. Tuck stated that 9,000 hours is a reasonable compromise.

By acclamation, all the members agreed that 9,000 hours should be the proposed amendment.

Dr. O'Connor advised that the second issue up for discussion is how overlapping practice hours can be used for attestation of a second specialty category. The RAP proposal is to use them all.

Ms. Hickey questioned how the hours are calculated if a patient is working in family practice and sees psychiatric patients.

Dr. O'Connor advised that the team physician attests that the hours performed were mental health hours.

Ms. Hickey asked if a nurse practitioner with a certification in psychiatry works in family medicine, and 30% of the patient population is mental health, would she need to work more than 5 years before practicing autonomously?

Ms. Yeatts confirmed that the attestation is dependent on the patient population as to whether or not the hours would count.

Dr. Walker asked if a family NP strictly worked for an ENT practice for 5 years and then returns to a family practice, is there a mechanism to address competency?

Ms. Barrett advised that, you as a practitioner licensed in medicine and surgery, have no limitation on your license and nothing to prevent you from changing specialties. Similarly, there is nothing in the Code that authorizes you to ask for proof of the nurse practitioner's competency. If the licensee wishes to be certified as an autonomous family NP, then he/she would have to practice for 5 years.

Ms. Yeatts referred to the draft regulations that a NP can only practice within the scope of his/her clinical/professional training, limits of knowledge and experience, and consistent with the applicable standards of care.

**MOTION**: Dr. Edwards moved to amend the existing emergency regulations to indicate that 5 years of clinical training equates to 9,000 hours. The motion was seconded and opened for discussion.

Dr. Archer stated his dissatisfaction with requiring a licensee to go back and obtain additional hours if he/she wants to change specialties.

Dr. Allison-Bryan said that, to become at Medication-Assisted Treatment (MAT) provider, one would need to obtain a waiver, which can only be obtained by taking a SAMHSA-approved course. Then, and only then, can a NP provide MAT in a collaborative practice.

Dr. Archer asked if the entire 5 years are accepted or just a portion.

Ms. Yeatts stated that the situation is dependent on whether there is overlap with the family practice attestation.

After some additional discussion, the motion passed 4 to 2, with Dr. Archer and Dr. Edward opposing.

Executive Director Note: Although discussed above, no motion was made to amend the recommendation of the RAP concerning acceptance of 100% of applicable hours on an attestation for a second specialty.

Consideration of Statutory Amendments

Ms. Yeatts advised that Code Section 54.1-2923.1 refers to an outdated program for impaired practitioners.

**MOTION**: Dr. Edwards moved to recommend deletion of 54.1-2923.1. The motion was seconded and carried unanimously.

**ANNOUNCEMENTS**

The next meeting of the Committee will be December 7, 2018 at 8:30 a.m.

**ADJOURNMENT**

With no additional business, the meeting adjourned at 9:58 a.m.

Kevin O'Connor, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary