

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

October 22, 2015

Department of Health Professions

Henrico, VA

CALL TO ORDER: Dr. Walker called the meeting of the Board to order at 8:39 A.M.

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

MEMBERS PRESENT:

Kenneth Walker, MD, President
Kevin O'Connor, MD, Secretary-Treasurer
Syed Ali, MD
Randy Clements, DPM
Lori Conklin, MD
Siobhan Dunnavant, MD (late arrival)
Alvin Edwards, MDiv, PhD
David Giammittorio, MD
The Honorable Jasmine Gore
Jane Hickey, JD
Maxine Lee, MD
Stuart Mackler, MD
Wayne Reynolds, DO
Svinder Toor, MD
Ray Tuck, DC

MEMBERS ABSENT: Barbara Allison-Bryan, MD, Vice-President
Kamlesh Dave, MD
Deborah DeMoss Fonseca

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
Marilyn Dundon, Discipline Support Specialist
David Brown, DC, DHP Director
Elaine Yeatts, DHP Senior Policy Analyst
Jim Rutkowski, Assistant AG

OTHERS PRESENT: Scott Johnson, Esq., MSV
Mike Jurgensen, MSV
Nicole Pugar, ACOG-VA
Jerry Canaan, HDJN

Sherman Master, MD, HPMP
Janet Knisely, PhD, HPMP

EMERGENCY EGRESS PROCEDURES

Dr. O'Connor read the emergency egress procedures for Conference Room 2.

INTRODUCTION OF NEW BOARD MEMBERS

Dr. Walker welcomed the Board's newest members and invited them to introduce themselves: Jane Hickey, J.D., who succeeds Lori Kleine, JD as a citizen member; Alvin Edwards who succeeds Irina Farquhar, PhD as a citizen member and Svinder Toor, MD, who succeeds Frazier Frantz, MD in the 3rd Congressional District. Each member gave a brief summary of their background. Dr. Harp noted that Dr. Edwards served on the Board 2004-2005.

APPROVAL OF THE JUNE 18, 2015 MINUTES

Dr. Mackler moved to accept the minutes of June 18, 2015 as presented. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

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

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Dr. Brown welcomed the new Board members and thanked them for agreeing to serve.

Dr. Brown then provided an update on the following:

Agency Vacancy – Jaime Hoyle, JD has accepted the position of Executive Director for the Behavioral Sciences boards, leaving the DHP Chief Deputy Director's position vacant.

DHP Training Opportunities – Both the Board Member Development and the New Board Member Orientation training days were successful and are expected to continue in the future.

Work Group in Progress – DHP is currently hosting a work group studying Pharmacy Benefit Managers (PBM). The formation of the work group arose from a constituent’s concern as to whether there is a need for a regulatory framework for PBM’s, since their decisions can impact the practice of pharmacy and patient care.

Criminal Background Checks – Beginning January 2016, all RN or LPN applicants will have to undergo a criminal background check. The vendor provides the sites, the applicant covers all the expenses, and it is not particularly onerous. However, there will be additional costs associated for those with criminal backgrounds. The Board of Medicine is considering the Interstate Licensing Compact, which will also require criminal background checks.

OT and OTA Workforce Report – Shows great trends in the professions which can serve as a tool to encourage people to choose healthcare as a career.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT’S REPORT

Dr. Walker noted his attendance at a FSMB meeting in Northern Virginia where he was able to meet Humayun Chaudhry, DO, CEO of FSMB. He noted that two previous Virginia Board members, Claudette Dalton, MD and Steve Heretick, JD, are currently serving on the Board of Directors of FSMB. Dr. Walker also attended the Pharmacy Benefit Managers meeting and found it very informative.

VICE-PRESIDENT’S REPORT

No report.

SECRETARY-TREASURER’S REPORT

Dr. O’Connor announced that he will be attending the C-Tel summit in November and will give a report at the next Full Board meeting.

EXECUTIVE DIRECTOR’S REPORT

- Cash Balance Report

Dr. Harp reported that the Board’s cash balance on May 31, 2015 was \$9.4 million.

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

- Enforcement, Administrative Proceedings, and Health Practitioners' Monitoring Program Costs

Dr. Harp briefly reviewed each of the reports noting the Board's robust use of Enforcement and Administrative Proceedings. He pointed out that the Board of Medicine currently has 123 participants in HPMP. Dr. Harp also noted that Medicine is DHP's leader in Attorney General services.

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

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

Dr. Walker asked everyone to review the updated committee assignments and thanked all for their willingness to serve.

Dr. Ali provided a quick summary of the Ad Hoc Committee on the Review of Mixing, Diluting and Reconstituting Regulations meeting. He said there was a lot of discussion by all in attendance on accepting/declining the recommendation of the Board of Pharmacy and USP to redefine immediate use as one hour to administration. He advised that the Committee was deadlocked 2-2 on redefining immediate use, so the current regulations remain in place. Dr. Conklin also noted that the Committee had a lively discussion.

Dr. Ali then noted that, based on information from the Board of Pharmacy's Board counsel, the Ad Hoc Committee recommends the following revision to 18VAC85-20-400. Requirements for immediate-use sterile mixing, diluting or reconstituting:

3. Establish and implement procedures for verification of the accuracy of the product that has been mixed, diluted, or reconstituted to include a second check performed by a doctor of medicine or osteopathic medicine or a ~~pharmacist~~, or by a physician assistant or a registered nurse who has been specifically trained pursuant to subdivision 2 of this subsection in immediate-use mixing, diluting or reconstituting. Mixing, diluting or reconstituting that is performed by a doctor of medicine or osteopathic medicine, a ~~pharmacist~~, or by a specifically trained physician assistant or registered nurse or mixing, diluting or reconstituting of vaccines does not require a second check;

Dr. Harp advised that the suggested changes would require regulatory action and therefore, if accepted, will come before the Executive Committee in December.

Dr. Dunnivant moved to accept the minutes en bloc. The motion was seconded and carried unanimously.

OTHER REPORTS

Assistant Attorney General

No report.

Board of Health Professions

No additional reporting items.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck gave a brief report on his attendance at the Tri-Regulator Symposium. He said that it was very informative and impressive how the three groups were brought together. He said that the keynote speaker talked about overlapping responsibilities of professions without overstepping boundaries.

Committee of the Joint Boards of Nursing and Medicine

No additional reporting items.

REPORT FROM THE HEALTH PRACTITIONERS' MONITORING PROGRAM

Dr. Sherman Master, Medical Director, and Janet Knisely, PhD, Administrative Director, presented an informative overview of the Health Practitioners' Monitoring Program. The presentation highlighted the processes of: intake interview, assessment/treatment recommendations, toxicology testing, case management and ongoing monitoring. In addition, the presentation covered the demographics and statistics of participants from January 1, 2015 to June 30, 2015. Dr. Knisely stated that 86.8% of the participants were being monitored for substance abuse/dependence; 55.7% of whom had a co-morbid disorder. Currently 11.4% are being monitored for a psychiatric disorder and 1.8% for a physical disorder.

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

Dr. Walker called for a break; the meeting reconvened at 10:10 a.m.

VIRGINIA PHYSICIANS, OCCUPATIONAL THERAPISTS AND OCCUPATIONAL THERAPY ASSISTANTS WORKFORCE--2014

Dr. Elizabeth Carter, Director for the Healthcare Workforce Data Center, presented a very brief but enlightening presentation on the forecast of these professions from their current trends.

The Board discussed the demographics, turnover and retirement rate of physicians. Dr. Dunnivant stated that a good job is being done to recruit physicians and asked what should be done on the retention side to keep physicians in the Commonwealth.

It was noted Dr. O'Connor's name needed to be corrected in the report. Dr. Carter said that unless there were any other identified errors, the report will be posted on the agency's website in the near future.

REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

In Ms. Yeatts' absence, Jennifer Deschenes provided an update on the status of the Board's pending regulations.

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

- Adoption of Final Regulations – Exempt actions –required by passage of legislation in 2015

Ms. Deschenes reviewed SB901 and Chapter 30 of Title 54.1, Regulations for the Licensure of Nurse Practitioners, and advised that the adoption of final regulations was exempt from the provisions of the Administrative Process Act in accordance with §2.2-4006. The Board of Nursing adopted the amendment at their September 15, 2015 business meeting. Ms. Deschenes advised that this action will bring the regulations into compliance with the new law.

After a brief discussion, Dr. Mackler moved to adopt the final regulation as presented. The motion was seconded and carried unanimously.

- Notice of Intended Regulatory Action – Occupational Therapy

Ms. Deschenes referred to the copy of draft regulations and advised that at its October 6th meeting, the Advisory Board on Occupational Therapy heard a presentation on continuing competency tools available for maintenance of certification. As such, the Advisory is recommending publication of a NOIRA to request comment on acceptance of current NBCOT certification as an option for meeting OT continuing competency requirements.

After discussion, Dr. Mackler moved to accept the recommendation of the Advisory Board to consider amendments to the requirements for continuing competency and to publish a Notice of Intended Regulatory Action. The motion was seconded and carried unanimously.

- Response to Petition for Rulemaking – Licensed Acupuncture – 18VAC85-110-10 et seq.

Ms. Deschenes informed the Board that on October 7, 2015, the Advisory Board on Acupuncture

discussed the petition and public comment at length and recommends that the Board of Medicine deny the requested changes as follows:

1 – Deny the addition of “herbs” after “food supplements” in section 180 because herbs are considered food supplements by the FDA. There was concern that any herbs that are not food supplements and outside the oversight of the FDA may present some risk to the public.

2 – Deny the addition of “basic examination prescription right”, which would expand the scope of practice for acupuncturists to include performance of or ordering of tests. Such an expansion may be inconsistent with the statutory definition of the practice of acupuncture in §54.1-2900. Additionally, ordering and interpreting tests is beyond the training received in most acupuncture educational programs in the U.S.

3- The request to change the requirement for documentation of referral or a recommendation for referral was not considered because the regulatory language in section 100 is specifically found in §54.1-2956.9 of the Code of Virginia.

After discussion, Dr. Mackler moved to accept the recommendations as presented by the Advisory Board on Acupuncture and deny the petition. The motion was seconded and carried unanimously.

Recommendation from the Advisory Board on Midwifery

Ms. Deschenes advised that at the October 9, 2015 meeting of the Advisory Board on Midwifery, Deb McPherson, citizen member on the Advisory Board, recommended that a work group be convened to consider allowing licensed midwives to have authority to possess and administer certain drugs. The motion passed unanimously at the Advisory Board.

Referring to the minutes in the packet, Ms. Deschenes gave a brief history of the previous work group’s attempts to address this issue in 2010 and 2011 with little headway made.

Dr. Harp called attention to the May 5, 2011 minutes (page 105) where it captures “Dr. Ransone advised that she did not think that the recommendations presented by Ms. Potter today would be accepted by the Full Board without some consideration of the high risk issue”. As predicted, the midwifery suggestions were not accepted by the Full Board in June 2011. Thereafter, the work group had no more meetings. However since 2011, the high-risk issue has been addressed by the development of Guidance Document 85-10: Disclosure by Licensed Midwives for High-Risk Pregnancy Conditions.

Dr. Dunnivant said that, as one of the members on the high-risk work group, the guidance document was developed incorporating the fact that midwifery practice does not include drugs. In considering the Advisory Board’s request, patient safety should be the Board’s top priority. She said that a lot of work had already been done by the previous work group, and there didn’t appear to be a need to re-establish the effort. She added that it would be challenging to grant limited prescriptive privileges to a profession.

Dr. Giammittorio spoke in opposition to the request from the Advisory Board. He stated that pitocin is a dangerous drug and is used in high-risk obstetrical situations. And once access is given to the profession, it would be hard to regulate its use.

Dr. Ali questioned what is different since the last time the work group met on this issue. Ms. Deschenes said that the profession has been at the Board since 2005, and the Advisory Board thought that the Board might be more comfortable with midwifery practice by now and might be receptive to the recommendation to re-establish the work group on medications.

Dr. Lee stated that it would be difficult to restrict the ways in which a drug is used when there is access to it.

Dr. Dunnivant said that medications are regulated for a reason. She was complimentary of the midwives on the high-risk work group and found them to be extremely engaged and professional. However, she said that she sees midwifery as more appropriate for low-risk pregnancies and noted again that Guidance Document 85-10 was written for practice without medications.

Dr. Giammittorio noted that in the OB field, 15% of physicians use nurse practitioners and 85% don't; he works with a highly trained certified nurse midwife. He noted that licensed midwives don't have the training that nurse midwives have. He advised that, over his career, he has seen tragedy in cases that were thought to be low-risk.

After the discussion, Dr. O'Connor moved to decline the recommendation of the Advisory Board on Midwifery to organize a work group for the purpose of considering the issue of midwives and medications. The Board unanimously agreed.

Ms. Deschenes noted that the midwifery group may go to the Legislature on this issue.

Guidance Document – Licensed Midwives

Ms. Deschenes stated that the Advisory Board on Midwifery voted at its October 9, 2015 meeting to recommend a change to the Guidance Document on Disclosures for High-Risk Pregnancy Conditions to make it clear to the midwifery community that the disclosure for intrapartum risk factors should be given to clients at the first prenatal visit.

After discussion, Dr. Dunnivant moved to accept the adoption of the revised Guidance Document 85-10. The motion was seconded and passed unanimously.

LICENSING REPORT

- Licensing Statistics

Mr. Heaberlin reviewed with the Board an updated licensee count, licenses issued, and the license renewal/expiration count report. He advised that Veridoc, the Board's outside vendor for

physicians and physician assistants, processed 550 verifications last month. Processing of medicine and surgery applications is averaging 3 ½ months from start to finish. When the application is complete, a license is generally issued within a week.

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

DISCIPLINE REPORT

Ms. Deschenes reviewed the status report of current open cases by stage. She noted that the agency switched over to a new software case tracking system and that staff had to do a manual count in order to provide these numbers.

Ms. Deschenes stated that there is a concern that the Board's dismissal rate at informal conferences is starting to rise. She reiterated the need for accurate probable cause review to determine if, at a hearing, the licensee would be found in violation.

Ms. Deschenes then explained how three paid claim assessments were addressed. She said that the Board requires any practitioner that has three claims in the last 10 years to undergo a competency assessment. This assessment is not a disciplinary matter; however, it can become a disciplinary matter if the assessment finds the practitioner incompetent or he/she refuses to get the assessment.

Recently, the Medical Society of Virginia expressed a concern and asked that every disciplinary case be reviewed by an outside expert. The Board explained that if we do not have expertise on the Board to review a case, the Board will hire an expert. However, as a result of MSV's concern, changes have been made in the process. For standard of care cases to go forward for a Consent Order or Informal Conference, two Board members must agree. If two reviewing Board members disagree, the tie will be broken by the President or an outside expert.

Jerry Canaan with HDJN advised that a summary of the overall process has been posted on the Medical Society of Virginia's webpage.

REMINDERS PAGE

Dr. Walker asked everyone to check their calendars and provide Ms. Deschenes or Ms. Wood with their availability.

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

Ms. Morton Opher announced that, due to a scheduling conflict, the Legislative Committee meeting will be held on January 13th at 8:30; an updated calendar reflecting that change will be provided.

ANNOUNCEMENTS

The next meeting of the Board is February 18, 2016.

Adjournment: With no other business to conduct, the meeting adjourned at 11:19 a.m.

Kenneth J. Walker, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthis M. Opher
Recording Secretary