

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 14, 2018

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Dr. O'Connor called the meeting of the Board to order at 8:40 a.m.

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

MEMBERS PRESENT: Kevin O'Connor, MD, President
Ray Tuck, DC, Vice-President
Lori Conklin, MD, Secretary-Treasurer
Syed Ali, MD
David Archer, MD
Randy Clements, DPM
Alvin Edwards, PhD
David Giammittorio, MD
Jane Hickey, JD
Jacob Miller, DO
David Taminger, MD
Svinder Toor, MD
Martha Wingfield

MEMBERS ABSENT: Isaac Koziol, MD
Maxine Lee, MD
Kenneth Walker, 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 M. Opher, Operations Manager
Cheryl Clay, Administrative Assistant
Sherry Gibson, Administrative Assistant
Trasean Boatwright, Administrative Assistant
Barbara Allison-Bryan, MD, DHP Deputy Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Jerry Gentile, DPB
Scott Johnson, MSV
Ryan LaMura, VHHA
Tanner Howell, VATA

EMERGENCY EGRESS

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

APPROVAL OF THE FEBRUARY 15, 2018 MINUTES

Dr. Archer requested that the minutes of February 15, 2018 be amended to indicate his attendance. Dr. Edwards moved to approve the minutes as amended. The motion was seconded and carried unanimously.

ADOPTION OF THE AGENDA

Dr. Edwards moved to accept the agenda as presented. The motion was seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

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

Dr. Allison-Bryan told the Board that she recently recognized that she has a “pronoun” problem. When speaking to other boards in the agency, she finds herself saying, “when **we** did this or that”. She commented that what she learned while on the Board of Medicine has and will continue to serve her well in her capacity as Deputy Director of DHP.

She informed the members that DHP has completed the move of the receptionist desk to the 1st floor of the building. It is more welcoming and addresses safety issues for DHP staff and board members. In addition to the reception area, the IT department and other support systems were relocated to the 1st floor, freeing up a large amount of space on the 3rd floor for boards.

Dr. Allison-Bryan reported the Federation of State Medical Boards conducted a survey of board members and found that 75% feel unsafe. Some reported verbal threats, others physical threats, linked to the contentious work that boards do. She said the safety of our building is being assessed by outside experts. Recently, Lisa Hahn, Chief Financial Officer, toured the building with the state police and received recommendations, to include a check-in location. Also mentioned were metal detectors and security cameras. Additionally, DHP ID badges will be made more restrictive in the future, allowing access only during certain hours and days of the week.

She also provided an update on the expansion of Medicaid, the progress on cannabis-based oils, the application method for oil processors, and the autonomous nurse practitioner regulations.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

Dr. O'Connor thanked Dr. Brown for supporting the Virginia delegation's attendance at the Federation of State Medical Boards (FSMB) Annual Meeting. He noted that Virginia was well-represented by current and former Board of Medicine members and staff. He said Virginia continues to have a significant presence and influence at FSMB, and that Virginia is thought to be a model for many initiatives and finding middle ground on topics such as PMP usage and opioid prescribing.

He said that board transparency, physician burnout, PMP requirements and the opioid crisis continue to be front and center concerns for all states. A new area of concern is the use of stem cells for which very little guidance exists and is seen as a treatment that is ripe for abuse. FSMB has developed a guidance document that he is willing to share with anyone who is interested.

Dr. O'Connor announced that Dr. Ken Walker was elected to the FSMB Nominating Committee.

He ended his report by encouraging the Board members to be more active in the Board's application review process.

VICE-PRESIDENT'S REPORT

Dr. Tuck reported on his attendance at the Federation of Chiropractic Licensing Boards (FCLB) Annual Meeting. He noted that the composition of the Virginia Board, which allows and encourages the professions to work together, is a great model for the rest of the country.

SECRETARY-TREASURER'S REPORT

Dr. Conklin had no report.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp began his report by noting that he has been attending FSMB annual meetings since 2000, and he thinks that this year's lineup of speakers was the best yet.

Revenue and Expenditures

Dr. Harp referred to the cash balance of April 30, 2018, noting that it was less than last year at this time. He explained that revenues lag behind expenditures in the first half of even years due to lower revenues in the odd years. He also pointed out that the Board's cash balance will continue to decline since the law requires that an overage of > 10% calls for a reduction of fees. In compliance, the Board has reduced the renewal fees for 3 biennia in a row.

Enforcement Hours

Dr. Harp informed the members that the Board is receiving approximately 40-75 more complaints per month.

A number of years ago, complaints were down as low as 1400-1500 per year. However, this year there may be 2400 or more.

APD Hours

Dr. Harp reviewed the APD report and pointed out that Medicine continues to be the leading user of APD hours.

HPMP Participation

Dr. Harp compared the 2017 and 2018 fiscal years, stating that there are a few more participants this fiscal year than last.

Cobalt Poisoning

Dr. Harp reminded the members of Dr. Brown's comments at the April Executive Committee meeting when he reported that Delegate Orrock had asked the Board to develop information to educate licensees about cobalt poisoning. With the assistance of Hugh Bryan, MD, Board staff put together an article (pages 34-35) that appeared in the April Board Briefs. Although the article was written primarily for the orthopedic community to provide facts about cobalt and chromium poisoning, it will also be helpful to primary care providers. No comment had been received until June 13th when Board staff was asked to electronically provide the article to the leadership of the Virginia Orthopedic Society.

Dr. Toor asked how many cases the Board had received on cobalt poisoning. Dr. Harp responded that he could not recall any complaints about cobalt poisoning. He added, that based the available literature, there have not been many cases in the States. The most informative article on this topic was from the UK and reported 16 cases.

Dr. Allison-Bryan stated that it is her understanding that metal-on-metal implants are rarely used in Virginia, and have been or will be taken off the market.

Review of Applications

Dr. Harp advised that, for the last 2 months, members have been coming to the Board to review license applications containing adverse information. He thanked the Credentials Committee and others that have made themselves available. He said that the new system was created to improve every aspect of the credentialing process.

FSMB Nominating Committee

Dr. Harp noted that Dr. Walker should be congratulated on his successful run for a position on the FSMB Nominating Committee. His presence will ensure that Virginia's voice continues to be heard in terms of direction and leadership of FSMB.

FCLB Letter of Commendation

Dr. Harp said Dr. Tuck is to be congratulated for the FCLB letter of commendation sent to Governor Northam for Dr. Tuck's attendance and work at the FCLB 92nd annual meeting.

Avoidance of the Appearance of Conflict of Interest

Dr. Harp explained that several years ago, a board member was seen talking to a legislator at a social event. At the time, there was a hot topic being discussed at DHP. An individual who had a strong interest in the issue witnessed the interaction and voiced some concern. Dr. Harp stated that care should always be taken to avoid the appearance of conflict of interest. If a Board member does express an opinion on a topic, make sure to say that it is your personal opinion and that you are not speaking for the Board.

Probable Cause and Application Review

Dr. Harp encouraged the members to give some time to license application review and discipline case review with Dr. Matusiak.

Plaque Presentation

Dr. O'Connor presented plaques to Dr. Allison-Bryan and Dr. Clements for their dedication and service to the Board. In their absence, Dr. O'Connor also acknowledged the service of Dr. Lee, Dr. Koziol and Mr. Jenkins. He remarked that one of the great joys of being on the Board was getting the opportunity to work alongside a great group of practitioners, and that their expertise will be missed.

COMMITTEE and ADVISORY BOARD REPORTS

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

OTHER REPORTS

Board Counsel

Erin Barrett, AAG 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

No report.

Podiatry Report

Dr. Clements reported on a conference call with the Federation of Podiatric Medical Boards (FPMB). He said the only items of note were FPMB's efforts on an interstate compact license and consolidation of board scores.

Chiropractic Report

Dr. Tuck had earlier given his report.

Committee of the Joint Boards of Nursing and Medicine

Dr. O'Connor reported on the Board of Nursing Regulatory Advisory Panel (RAP) established for the purpose of discussing the implementation of HB 793 – Autonomous practice for certain nurse practitioners. Dr. O'Connor noted that the RAP consisted of 9 members, 6 of whom were nurse practitioners. He said that Ms. Yeatts' report would provide more details.

New Business:

1. Regulatory and Legislative Issues

- **Chart of Regulatory Actions**

Ms. Yeatts reviewed the chart on the status of regulations for the Board as of May 31, 2018. She said that the Governor's office is diligently working on a large backlog of regulations.

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

- **Notice of Periodic Review of Regulations – Request for Comment**

Ms. Yeatts reported that the Notices of Periodic Review for the following regulations are being published for comment.

- 18 VAC 85-15 Regulations Governing Delegation to an Agency Subordinate
- 18 VAC 85-20 Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry, and Chiropractic
- 18 VAC 85-40 Regulations Governing the Practice of Respiratory Therapists
- 18 VAC 85-50 Regulations Governing the Practice of Physician Assistants
- 18 VAC 85-80 Regulations for Licensure of Occupational Therapists
- 18 VAC 85-101 Regulations Governing the Licensure of Radiologic Technology
- 18 VAC 85-110 Regulations Governing the Practice of Licensed Acupuncturists
- 18 VAC 85-120 Regulations Governing the Licensure of Athletic Trainers
- 18 VAC 85-130 Regulations Governing the Practice of Licensed Midwives
- 18 VAC 85-150 Regulations Governing the Practice of Behavior Analysis

The purpose of this review is to determine whether a regulation should be retained in its current form,

amended, or repealed.

Ms. Yeatts advised that the comment period runs from May 28, 2018 until June 27, 2018, and all comment will be reviewed by the Legislative Committee in September.

- **Notice of Request for Comment on Draft Regulations – HB 793**

Ms. Yeatts confirmed that the Boards of Medicine and Nursing are seeking public comment on the Draft Regulations to implement HB 793 to authorize nurse practitioners who meet certain qualifications to practice without a practice agreement with a patient care team physician.

The Comment period will be open from May 22, 2018 to June 21, 2018.

Ms. Yeatts said that the Board of Nursing will consider the Draft Regulations on July 17, 2018 and the Board of Medicine on August 3, 2018. She noted that to comply with the second enactment clause in the bill that requires regulations to be in effect within 280 days, the Boards will be adopting emergency regulations. If the Board of Nursing and the Executive Committee of the Board of Medicine do not agree on the adoption of the regulations as presented, another meeting of the Joint Committee and comment period will occur.

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

- **Legislative Proposal - Genetic Counseling**

Ms. Yeatts provided a brief account of the issues discussed by the Advisory Board on Genetic Counseling.

She said that years ago, the examination for genetic counselors was given by the American Board of Medical Genetics (ABMG). When the ABMG became part of the American Board of Medical Specialties in 1993, it could no longer certify genetic counselors, only physicians. A new organization, the American Board of Genetic Counseling (ABGC) was formed, and all who had passed the ABMG examination were grandfathered into ABGC certification.

The Advisory Board also discussed revising Section 18VAC85-170-60 of the Regulations Governing Genetic Counseling due to the concern that the language regarding the “expiration of active candidate status” could be confusing.

To address these two issues, the following draft legislation to amend is being recommended:

§ 54.1-2957.19. Genetic counseling; regulation of the practice; license required; licensure; temporary license

C. An applicant for licensure as a genetic counselor shall submit evidence satisfactory to the Board that the applicant (i) has earned a master's degree from a genetic counseling training program that is accredited by the Accreditation Council of Genetic Counseling, **or its predecessor organizations**, and (ii) holds a current, valid certificate issued by the American Board of Genetic Counseling or American Board of Medical Genetics to practice genetic counseling.

E. The Board may grant a temporary license to an applicant who has been granted Active Candidate Status by the American Board of Genetic Counseling and has paid the temporary license fee. Temporary licenses shall be valid for a period of up to one year. ~~An applicant shall not be eligible for temporary license renewal upon expiration of Active Candidate Status as defined by the American Board of Genetic Counseling.~~ A temporary license shall expire twelve months from issuance or upon failure of the American Board of Genetic Counseling examination, whichever comes first. A person practicing genetic counseling under a temporary license shall be supervised by a licensed genetic counselor or physician.

After a brief discussion, Dr. Edwards moved to adopt the draft legislation as proposed. The motion was seconded and carried unanimously.

- **Legislative Proposal – Board of Medicine Impaired Physicians Program**

Ms. Yeatts gave credit to the Board of Medicine staff for noticing outdated language in §54.1-2909 that references an agreement for an Impaired Physicians Program which has not been utilized since the advent of the Health Practitioners Monitoring Program.

Additionally, the requirement in 54.1-2909 of presidents of all professional societies to report is redundant of language found in §54.1-2908, so it can be deleted.

The proposed amendments are as follows:

§ 54.1-2909. Further reporting requirements; civil penalty; disciplinary action.

B. The following persons and entities are subject to the reporting requirements set forth in this section:

1. Any person licensed under this chapter who is the subject of a disciplinary action, settlement, judgment or evidence for which reporting is required pursuant to this section;
2. Any other person licensed under this chapter, except as provided ~~in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;~~ by a contract agreement with the Health Practitioner Monitoring Program;
3. ~~The presidents of all professional societies in the Commonwealth, and their component societies whose members are regulated by the Board, except as provided for in the protocol agreement entered into by the Medical Society of Virginia and the Board for the Operation of the Impaired Physicians Program;~~

Dr. Toor moved to adopt the draft legislation as proposed. The motion was seconded and carried unanimously.

- **Legislative Proposal – Athletic Training**

Ms. Yeatts reported that the Advisory Board on Athletic Training had identified the need to clarify the definition of the “practice of athletic training” to fully reflect the scope of AT professional activity. In addition to working with athletes at all levels of activity, athletic trainers also work in military, corporate and other settings on injuries and conditions resulting from occupational activity. The current definition allows for such

practice but the Advisory Board believes it should be stated more clearly.

§ 54.1-2900. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Practice of athletic training" means the prevention, recognition, evaluation, and treatment of injuries or conditions related to athletic, ~~or recreational~~ **or occupational** activity that requires physical skill and utilizes strength, power, endurance, speed, flexibility, range of motion or agility ~~or a 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.

This draft legislative proposal was approved by acclamation.

2. Review of the Board of Medicine Bylaws

Dr. Harp stated that every several years the Board reviews its Bylaws for currency. He noted that Behavior Analysts and Genetic Counselors need to be added to the "Report of the Advisory Boards."

He also pointed out that the authority of the Vice-President to appoint members to the Legislative Committee in consultation with the President should also appear in the language describing the formation of the Legislative Committee. Dr. O'Connor agreed that the language should be consistent.

Dr. Edwards moved to accept the amendments to the existing bylaws. The motion was seconded and carried unanimously.

3. Appointment of Committee to Determine CME for 2019-2020

Dr. Harp noted that in 2016, the General Assembly passed HB 829 which authorized the DHP Director to provide information from the Prescription Monitoring Program (PMP) to the Board of Medicine about prescribers who meet a certain threshold for prescribing covered substances for the purpose of requiring relevant continuing education. The threshold is to be determined by the Board of Medicine in consultation with the PMP. This law made it possible for the Board to fulfill the requirement found in § 54.1-2912.1 (C).

§ 54.1-2912.1. (Effective until July 1, 2022) Continued competency and office-based anesthesia requirements.

C. The Board shall require prescribers identified by the Director of the Department of Health Professions pursuant to subdivision C 10 of § [54.1-2523](#) to complete two hours of continuing education in each biennium on topics related to pain management, the responsible prescribing of covered substances as defined in § [54.1-2519](#), and the diagnosis and management of addiction. Prescribers required to complete continuing education pursuant to this subsection shall be notified of such requirement no later than January 1 of each odd-numbered year.

Dr. Harp said the committee would need to meet in the fall of 2018, such that prescribers licensed by the Board of Medicine can be notified by January 1, 2019.

After stating that he would be willing to participate, Dr. O'Connor asked for volunteers. Dr. Conklin and Dr. Taminger both agreed to join him on the committee.

4. Licensing Report

In Mr. Heaberlin's absence, Dr. Harp provided the up-to-date number of practitioners currently licensed by the Board.

He emphasized that the Board has 23 license types it issues to over 70,000 licensees, and over 80,000 if you include the nurse practitioners.

Dr. Harp said that in 2017, the Board issued 6,300 initial licenses. Roughly the same number is expected for this year.

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

5. Discipline Report

Ms. Deschenes went over the status of pending cases at the Board, APD and Enforcement level.

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

BREAK: Dr. O'Connor called a 15-minute break at 9:43 a.m.; the meeting reconvened at 10:02 a.m.

6. Hearing Etiquette

Jennifer Deschenes, JD and Erin Barrett, JD provided a brief, extremely informative presentation on "Hearing Protocol". The presentation covered the purpose of disciplinary hearings, avoiding the appearance of impropriety, the difference between open and closed session, formal and informal hearings, procedural mysteries, grounds for appeal and more.

Dr. Allison-Bryan suggested that pages 1-8 of the presentation be periodically provided to all Board members. She stated that the points are a good refresher for seasoned members and great tips for newly-appointed members.

7. Approval of the Proposed 2019 Meeting Calendar

Ms. Opher noted that the proposed date of May 17th for the Legislative Committee fell on a state holiday and suggested it be moved to May 11th.

The amended proposed meeting calendar was accepted by acclamation.

8. Report of the Nominating Committee

Dr. Clements, Chair of the Nominating Committee, presented the slate of officers:

- Kevin O'Connor, MD – President
- Ray Tuck, DC, – Vice-President
- Lori Conklin, MD – Secretary-Treasurer

With no other nominations from the floor, the Board unanimously accepted the slate as presented.

9. Announcements

Dr. O'Connor encouraged the members to mark their calendars for the next Full Board meeting scheduled for October 18, 2018 at 8:30, and to remember to submit their travel vouchers by July 9, 2018.

Dr. Harp announced that Alan Heaberlin, Deputy Executive Director for Licensing, will be leaving the Board at the end of July.

10. Adjournment

With no other business to discuss, Dr. O'Connor adjourned the meeting of the Full Board at 10:40 a.m.

Kevin O'Connor, MD
President, Chair

William L. Harp, MD
Executive Director

Colanthia Morton Opher
Recording Secretary