

**VIRGINIA BOARD OF HEALTH PROFESSIONS
DEPARTMENT OF HEALTH PROFESSIONS
FULL BOARD MEETING
JANUARY 12, 2004**

TIME AND PLACE: The meeting was called to order at 1:05 p.m. on Monday, January 12, 2004, Department of Health Professions, 6603 W. Broad St., 5th Floor, Room 1, Richmond, VA.

PRESIDING OFFICER: Alan Mayer, Chair

MEMBERS PRESENT: David R. Boehm, L.C.S.W.
Lynne M. Cooper
Michelle R. Easton, R.Ph.
Joe Gieck, P.T.
Terone B. Greene, Citizen Member
David H. Hettler, O.D.
Jerry A. Hinn, D.V.M.
Joseph Jenkins, Jr., F.S.L.
Nadia B. Kuley, Ph.D.
Diane Reynolds-Cane, M.D.
Michael W. Ridenhour, Au.D.
Harry S. Seigel, D.D.S.
Mary M. Smith, L.N.H.A.
Demis L. Stewart, Citizen Member
Joanne Taylor, Citizen Member
Lucia Anna Trigiani, Citizen Member

MEMBERS NOT PRESENT: Natale A. Ward, L.P.C.

STAFF PRESENT: Robert A. Nebiker, Agency Director
Howard Casway, Senior Assistant Attorney General
Elizabeth A. Carter, Ph.D., Executive Director for the Board
Elaine Yeatts, Senior Regulatory Analyst
Faye Lemon, Enforcement Division Director
Carol Stamey, Administrative Assistant

OTHERS PRESENT: Alexander C. Mabin, Virginia Assisted Living Association (VALA)
Beverley Soble, Virginia Health Care Association (VHCA)

QUORUM: With seventeen (17) members present, a quorum was established.

PUBLIC COMMENT: General public comment was not presented at this time. However, public comment regarding assisted living was during discussion

APPROVAL OF MINUTES:

of "Information on Assisted Living in Virginia." On properly seconded motion by Dr. Seigel, the Board voted unanimously to approve the minutes of the October 22, 2004 meeting.

EXECUTIVE DIRECTOR'S REPORT:

Dr. Carter reported that as of November 30, 2003, the \$119,000 balance in the budget reflected a 69% balance. She stated that, as such, there should be adequate funding to conduct the Board's upcoming activities.

DIRECTOR'S UPDATE ON AGENCY'S JLARC RESPONSE:

Mr. Nebiker presented a brief summary of Joint Legislative Audit and Review Commission's (JLARC's) recommendations and the agency's response to each in a score sheet format (see the Attachment). He apprised the Board that the majority of items are substantially complete. There are some that need to be completed and several that were not accepted. Mr. Mayer asked that JLARC receive a status report from Mr. Nebiker that includes why the recommendations that were not accepted were not accepted

Also discussed by Michelle Easton, R.Ph. and Ms. Yeatts was the Board of Pharmacy's response to JLARC's recommendation that the Board of Pharmacy should reinstitute drug audits. Because drug audits require a pharmacy inspector to typically spend an entire day or more to inventory the drugs in a pharmacy, even when there is no probable cause of any problems, the Board of Pharmacy contends that random audits should not be reinstated. It is manpower and cost prohibitive with little or no appreciable benefit.

REVIEW OF HEALTH-RELATED LEGISLATION:

Ms. Yeatts provided an overview on the legislation that had been introduced as of January 12, 2004. She reported that the period to file had not yet ended, so there would likely be more bills.

Mr. Nebiker described the agency's legislation to be filed which would allow all boards within the Department to delegate to appropriate subordinates certain case review functions.

UPDATE ON REGULATORY PROPOSALS:

Ms. Yeatts reported that most of the regulations of the various boards had been recently finalized. However, since certain regulatory actions can be placed on a "fast track," a number of boards have begun to schedule public hearings on new proposed regulations.

INFORMATION ON ASSISTED LIVING IN VIRGINIA:

Dr. Carter provided a slide presentation to brief the Board on Virginia's current regulation of assisted living facilities. She also described recent facility licensure and complaint statistics and noted that the component of Virginia's elderly population that will

most likely need assisted living services is expected to increase over the next for the next two decades.

Mr. Mabin and Ms. Soble briefed the Board of their views of the current status of the industry and the respective positions of their organization on the need to regulate assisted living administrators/directors.

Mr. Mabin stated that the majority of existing facilities are small in scope and they are already regulated by the Department of Social Services. Further, he held that state licensure was not necessary and could be burdensome.

Ms. Soble cited a report from the Assisted Living Workgroup (stakeholders brought together by the U.S. Senate Special Committee on Aging in 2001). The Assisted Living Workgroup report indicated that there are a host of problems relating to the services provided in these settings. They recommend state licensure for those administrators/directors not already licensed as a nursing home administrator, following the Workgroup's model for minimum education and experience, minimum qualifications of the licensure course and examination, continuing education, and transition requirements for those currently serving as assisted living administrators. She further reported that the VHCA would be forwarding to the General Assembly an amendment to the budget bill in support of the Board of Health Professions to study the need to regulate assisted living administrators/directors.

**COMMITTEE
REPORTS:
WORKPLAN STATUS**

Enforcement Committee

Dr. Hinn reported that the Committee had received a presentation from Dr. Carter on achieving the enforcement review goals described in the Board's workplan. The Committee approved the continuation of the Sanction Reference Study and adopted the Committee's proposed overall workplan. The Committee workplan provides for review of quarterly reports on agency performance and for a review of the current case priority system. A third workplan item, involves the inability for boards to move cases directly to formal hearing, even those that have been designated as the most serious -- Priority 1 and 2. Since 1997 when legislation went into effect to allow special conference committee orders in lieu of full board ratification, the boards have lost the option of sending cases directly to formal hearing, absent summary suspension. The Committee agreed to the review but voted to subsume it under the general priority system review.

Education Committee

On properly seconded motion by Mr. Green, the Board voted

unanimously to accept the recommendation of the Education Committee: to coordinate with the Board of Pharmacy in holding an Educational Conference on the Virginia Prescription Monitoring Program in the Fall of 2004. The funding for the conference is predicated on obtaining grant monies through the U.S. Harold Rodgers Prescription Monitoring Program.

Regulatory Research Committee

Mr. Gieck apprised the Board that the Committee was awaiting response to move forward with the dialysis technician regulations. In addition, he noted that the Committee would be interested in the General Assembly's response to the VHCA request concerning assisted living directors.

**HEALTH
REGULATORY BOARD
ISSUES:**

Dr. Easton reiterated the Board of Pharmacy's concerns relating to the lack of need to reinstitute drug audits. She also reported that the Board of Pharmacy would be closely monitoring legislation regarding the purchase of drugs from Canada.

NEW BUSINESS:

Dr. Carter noted that minutes from the individual regulatory boards would be disseminated to the Board of Health Professions members as updated. She noted that the issue before several of the boards was the implementation of continuing education requirements. As the Executive Director for two health regulatory boards that have had continuing education programs for a number of years, she offered to assist any board that would like her help.

ADJOURNMENT:

On properly seconded motion by Dr. Easton, the meeting adjourned at 3:30 p.m.

Alan E. Mayer, Chair

Elizabeth A. Carter, Ph.D.
Executive Director for the Board

ATTACHMENT

Summary of Recommendations and Actions Report of the Joint Legislative Audit and Review Commission: Final Report: Review of the Health Regulatory Boards, To the Governor and the General Assembly House Documents No. 5 2000

Prepared for the Board of Health Professions, January 2003

| Recommendation | Status | Comment |
|---|--|--|
| <p>Recommendation (1). The Board of Nursing, with the assistance of the Secretary of Health and Human Resources, should work to resolve the Certified Nurse Aide program's budget deficit in order for the Board of Nursing to have the funds necessary to make disciplinary decisions in certified nurse aide cases based on the seriousness of the violation and the need to protect the public and not on financial constraints.</p> | <p>Substantially complete.</p> | <p>This matter is resolved through the 2004-2006 biennium. It is impossible to give assurance of the availability federal and state general fund dollars. Therefore this issue should be revisited in the coming biennium.</p> |
| <p>Recommendation (2). The General Assembly may wish to consider amending the Code of Virginia to: (1) require that all licensees report unprofessional, incompetent, or substandard conduct or care by any other practitioner licensed by the same board; (2) require any licensed psychiatrist, psychologist, professional counselor, or social worker to report any unprofessional, incompetent, or substandard conduct or care by any other such licensee; and (3) provide immunity to any such person who makes a report from criminal or civil liability resulting from such report.</p> | <p>(1) Recommendation not accepted. (2) Recommendation not accepted. (3) Needs to be completed.</p> | <p>Thus far, the Board has not undertaken this study on this. However, the reporting requirements resulting from HB1441 may accomplish the primary aims of this recommendation without further study by the Board. The extension of reporting requirements for all licensees was considered during HB1441 discussions but not incorporated into legislation.</p> <p>Currently the Department's legislative proposal would extend immunity to all licensees making a mandatory report</p> |
| <p>Recommendation (3). The Board of Health Professions should study whether the reporting requirements should be extended to require all health care professionals to report any unprofessional</p> | <p>Not accepted.</p> | <p>See 2 above.</p> |

