

**VIRGINIA BOARD OF MEDICINE
EXECUTIVE COMMITTEE MINUTES**

Friday, December 2, 2022

Department of Health Professions

Henrico, VA

CALL TO ORDER: Mr. Marchese called the meeting of the Executive Committee to order at 8:30 a.m.

ROLL CALL: Ms. Brown called the roll; a quorum was declared.

MEMBERS PRESENT: Blanton Marchese – President & Chair
Alvin Edwards, MDiv, PhD
Jane Hickey, JD
Jacob Miller, DO
Joel Silverman, MD
Ryan Williams, MD

MEMBERS ABSENT: David Archer, MD
Karen Ransone, MD

STAFF PRESENT: William L. Harp, MD - Executive Director
Jennifer Deschenes, JD - Deputy Exec. Director for Discipline
Michael Sobowale, LLM - Deputy Exec. Director for Licensure
Arne Owens, LTC, USA Retired, MS – DHP Director
Jim Jenkins, BSN, RN, SCRNP – DHP Deputy Director
Barbara Matusiak, MD - Medical Review Coordinator
Deirdre C. Brown - Executive Assistant
Erin Barrett, JD – DHP Senior Policy Analyst
M. Brent Saunders, JD – OAG Board Counsel

OTHERS PRESENT: Jennie Wood – Discipline Case Manager
Matt Novak – DHP Policy Analyst
W. Scott Johnson, JD – Medical Society of Virginia
Clark Barrineau – Medical Society of Virginia

EMERGENCY EGRESS INSTRUCTIONS

Mr. Marchese provided the emergency egress instructions for Board Room 3.

APPROVAL OF MINUTES OF AUGUST 5, 2022

Dr. Edwards moved to approve the minutes from August 5, 2022 with one correction on page 2. The motion was seconded by Dr. Miller and carried unanimously.

ADOPTION OF AGENDA

Dr. Edwards moved to adopt the agenda with the revision that New Business items 1 & 2 be presented by Erin Barrett immediately after Public Comment. The motion was seconded by Dr. Miller and carried unanimously.

PUBLIC COMMENT

Mr. Marchese opened the floor for public comment. Scott Johnson, JD shared with the Committee that Dr. Harp was recognized by the MSV Foundation for “Service to the Profession” at the end of October 2022. Dr. Harp was nominated for the award by his peers. Mr. Johnson thanked Dr. Harp for his service to the medical community. Dr. Harp said he was honored and humbled by the recognition and thanked Mr. Johnson and MSV for their collegial coordination over the years.

Next, Clark Barrineau took the podium and asked the Committee to turn their attention to page 20 in the agenda packet. He asked that question #4 in the application be removed from the application. Question #4 is focused on mental health, and Mr. Barrineau stated that Virginia should trend with other states that are removing mental health questions from their applications.

NEW BUSINESS ITEMS 1 AND 2

Before going into New Business, Ms. Barrett introduced Matt Novak to the Committee as the newly hired DHP Policy Analyst. She stated that Mr. Novak will be attending the Board’s meetings, and at times will be covering meetings in her absence.

1. Regulatory Actions as of October 5, 2022 – Erin Barrett

Ms. Barrett asked the Committee members to turn to page 10 of the agenda packet, the Board of Medicine’s “Current Regulatory Actions” as of October 5, 2022. Ms. Barrett commented that at this time there were no actions in the Governor’s office. The actions listed as being at the Secretary’s level were expected to move on soon. The actions listed at DPB or OAG are currently at 41 days in those offices. Lastly, there are no actions that recently became effective or are awaiting publication. There was no action to be taken on this item.

2. Adoption of Revisions to Guidance Document 90-56 – Erin Barrett

Ms. Barrett presented proposed revisions to Guidance Document 90-56 related to practice agreements for nurse practitioners, as seen on page 14 of the agenda packet. This guidance

document pertains to licensees who are jointly regulated by both the Board of Medicine and the Board of Nursing. Ms. Barrett shared that the Board of Nursing has already approved this document at its November Board meeting. Therefore if any changes are made, it will need to return to the Board of Nursing for review. After discussion, Ms. Barrett shared that most Clinical Nurse Specialists are not required to have a practice agreement with a physician, since most do not prescribe. The statutory changes have been reflected in the proposed language of the Guidance Document.

MOTION: Dr. Williams moved to revise Guidance Document 90-56 as presented. The motion was properly seconded by Dr. Miller and carried unanimously.

DHP DIRECTOR'S REPORT

Mr. Marchese introduced DHP's newly appointed Director, Arne Owens, and shared his previous positions and past accomplishments. Mr. Owens then took the floor.

He said that what he found rewarding here is the people, the DHP staff, and said that he looks forward to working with everyone at DHP. He congratulated Dr. Harp on the MSV recognition and then introduced Jim Jenkins, the newly appointed DHP Deputy Director, who comes from VCU Health. Mr. Jenkins served as a member of the Board of Medicine and more recently as a member of the Board of Pharmacy. He mentioned his previous positions and past accomplishments. Mr. Jenkins congratulated Dr. Harp on his award and thanked everyone for the warm welcome to DHP. He said that he enjoys the education that came from being a part of the Board, and he was looking forward to the future at DHP.

PRESIDENT'S REPORT

Mr. Marchese shared with the Board that he attended the 2022 Tri-Regulators' meeting in October in Washington, DC. Jay Douglas from the Board of Nursing and Caroline Juran from the Board of Pharmacy also attended. He mentioned that overdose deaths from prescription opioids have not changed significantly in the last 15 years, and that now illicit fentanyl is responsible for the greatest number of overdose deaths.

Mr. Marchese then gave an update on the Physician Assistant Compact, stating that it now has model legislation that can be submitted in state legislatures. Virginia will probably not see this in the 2023 Session, but perhaps in a subsequent year. The structure of the Compact will allow PA's to cross state lines with practice privileges and will not require licensure as does the Interstate Medical Licensure Compact. The PA Compact has some similarities to the Nurse Compact.

Dr. Harp then informed all that Michael Sobowale is Chair of the Rules Committee for the OT Compact, which gives Virginia considerable influence in how the OT Compact will be administered.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp shared with the Committee that FSMB sends out an annual board survey on board concerns and resources that FSMB might provide. This year's survey was completed by 52 of the 70 state boards (74%) between July and September of 2022. The boards reported the following top three issues on a 0-10 importance scale: Physician Sexual Misconduct (8.9), Physician Impairment (8.8), and Opioid Prescribing (8.4). Jennifer Deschenes added that FSMB's Disciplinary Alert Service is very useful because it notifies all state boards of disciplinary actions in which a physician is licensed.

Dr. Harp added that the Board and its entities can no longer meet virtually. An individual Board member can petition to attend virtually if statutory good cause is shown.

3. Reciprocal Licensing Process and Application – Dr. Harp and Michael Sobowale

Dr. Harp stated that the first step is to establish a Memorandum of Agreement (MOA), which DC's Board Counsel put together this summer. The 3 jurisdictions made suggestions on the draft MOA to DC Counsel, who incorporated them into the document. Board Counsel Brent Saunders stated that the MOA is currently under review at OAG. Dr. Harp then described generally the process that would be involved and the application that is going to be used. The process anticipates an online application that goes to a dedicated email box. There will be a dedicated phone line for staff handling reciprocal licensing to field questions. The only supporting documents required will be license verification from the other jurisdiction and a NPDB report. If all questions on the application are answered, "no", then the licensing specialist will be able to issue the license. If any of the questions are answered, "yes", then the application will be switched over to the traditional pathway. If a Virginia licensee applies to DC or Maryland, Board staff will email a verification to the requesting Board. Jennifer Deschenes and her staff will verify any pending disciplinary actions or current investigations for the other jurisdiction.

Dr. Harp asked the Committee to weigh in on the 7 questions in the draft application. Question #1 drew comment from Ms. Hickey asking if this included a reprimand. Dr. Harp stated that it would not include a reprimand, which is a cross-sectional sanction. The question only asks about a restriction on the license which encumbers it going forward. The NPDB report would capture those with prior discipline. The Committee agreed to the question as written.

Question #2 was agreed to as well, given that either a pending disciplinary matter or an ongoing investigation would be disqualifying for reciprocal licensing.

Dr. Harp moved to question #3. Dr. Silverman noted that if the word "physical" was removed from question #3, it might obviate the need for questions #4 and #5. Dr. Harp said that these 3 questions are to protect the public, and he liked Dr. Silverman's suggestion very much. Dr. Miller and Dr. Silverman agreed that the questions should be asked, but applicants may not answer truthfully. Question #4 is currently at OAG to consider revised language. If there is revised language, it will be used by all boards in DHP.

Dr. Harp then reviewed question #6. He said that the process in licensing now requires an applicant that is currently in another state's physician health program to join Virginia's HPMP in

order to be licensed. A “yes” answer to this question moves the application over to the traditional pathway.

Lastly, Dr. Harp asked the Committee for its input on question #7 on the application. The Board members agreed with 3 or more malpractice paid claims, but suggested to take out the \$75,000 amount. The Committee thought that 3 or more paid claims are significant, regardless of the amounts. A “yes” answer to this question will cause the application to be placed in the traditional pathway.

MOTION: Dr. Miller moved to adopt the draft application as discussed. The motion was properly seconded and carried unanimously.

Break at 9:51 a.m., resumed meeting at 10:03 a.m.

4. Greater Delegation to Licensing Staff for Non-Routine Applications – Dr. Harp

Dr. Harp shared with the Committee that on October 20, 2022, a Zoom meeting was held with Mr. Marchese, Dr. Miller, and Michael during which non-routine information was discussed. Mr. Marchese then shared with the Committee that there are about twenty non-routine applications a week, some of which Ms. Hickey has reviewed as well. Dr. Miller and he have made suggestions about the non-routine information that staff could be delegated for review. Dr. Miller, Mr. Marchese, and Ms. Hickey all agree that these suggestions will help reduce the number of days it takes to process applications.

Dr. Miller then asked Mr. Sobowale to describe the qualifications of a licensing specialist. Mr. Sobowale responded that the licensing specialists go through an interview process, and that they all come from different professional backgrounds. Once on staff, they are trained about their specific professions, applications, and required supporting documentation.

Mr. Marchese then suggested for the Committee to review all 18 of the suggestions to see if anyone had any questions or concerns. The Committee agreed to most of the changes, but would like the wording of all suggestions be changed from “5 years prior...” to “5 years of active practice prior to application.”

MOTION: Dr. Edwards moved greater delegation to licensing staff for review of non-routine applications as discussed. The motion was properly seconded by Dr. Miller and carried unanimously.

5. Regulatory Advisory Panel for Updating the Board of Medicine Regulations Governing Prescribing of Opioids and Buprenorphine – Blanton Marchese

Mr. Marchese shared that the CDC published its 2022 Clinical Practice Guideline for Prescribing Opioids for Pain in November. He suggested to the Committee the need to convene a regulatory advisory panel (RAP) to perform a periodic review of the Board’s opioid

regulations and consider including revisions from the updated CDC guideline. He said the RAP should include a diversity of stakeholders. Dr. Harp underscored that the Board's regulations became effective in March 2017, and now that the CDC has published its new guideline, the Board can move forward with its periodic review. Stakeholders in this process should include those in academia, the community, and other state agencies. Dr. Miller suggested full-time community pain management doctors be included, since they treat 80% of pain patients. Ms. Hickey suggested recovering patients, who are consumers, would also be good to add to the RAP. Mr. Marchese also suggested someone from the CDC could perhaps be on the panel. In closing, Mr. Owens stated that it was really good that the Board of Medicine was doing this.

MOTION: Dr. Edwards moved to form a Regulatory Advisory Panel to perform periodic review of the Board's opioid regulations and incorporate significant changes from the new CDC guideline. The motion was properly seconded by Dr. Miller and carried unanimously.

ANNOUNCEMENTS

All were reminded to submit their Travel Expense Reimbursement Vouchers within 30 days after completion of their trip (CAPP Topic 20335, State Travel Regulations, p. 7).

The next meeting of the Executive Committee will be April 7, 2023 @ 8:30 a.m.

ADJOURNMENT

With no additional business, the meeting adjourned at 10:58 a.m.

Jennifer Deschenes, JD
Acting Executive Director