

**VIRGINIA BOARD OF MEDICINE MINUTES**

Thursday, February 22, 2007

Department of Health Professions

Richmond, VA

**CALL TO ORDER:**

The meeting of the Board convened at 8:18 a.m.

**MEMBERS PRESENT:**

Malcolm Cothran, MD, President  
Stephen Heretick, JD, Vice-President  
Jane Piness, MD, Secretary-Treasurer  
Gen. Clara Adams-Ender, RN, MSN  
Sandra Anderson Bell, MD  
Ann T. Burks, JD  
Patrick Clougherty, MD  
Claudette Dalton, MD  
Suzanne Everhart, DO  
Valerie Hoffman, DC  
Gopinath Jadhav, MD  
Brent Lambert, MD  
Juan Montero, MD  
Robert Mosby, MD  
Karen Ransone, MD  
Ellen Shapiro, DPM

**MEMBERS ABSENT:**

John Armstrong, MD  
Roderick Mathews, JD

**STAFF PRESENT:**

William L. Harp, MD, Executive Director  
Barbara Matusiak, MD, Medical Review Coordinator  
Jennifer Deschenes, JD, Deputy Executive Director of Discipline  
Kate Nosbisch, MS, Deputy Executive Director of  
Practitioner Information  
Ola Powers, Deputy Executive Director of Licensure  
Elaine Yeatts, DHP Senior Policy Analyst  
Amy Marschean, Assistant Attorney General  
Colanitha Morton Opher, Recording Secretary

**OTHERS PRESENT:**

Michael Jurgensen - Medical Society of Virginia  
Tyler Cox - Medical Society of Virginia  
Joe Foley, DC – Virginia Society of Chiropractic  
Dr. Waldu, Sr. Deputy Director, DC Health Regulation Licensing  
Administration  
James Granger – D.C. Health Regulation Licensing Administration  
Gregory Scurlock – D.C. Health Regulation Licensing Administration  
John Greenhaugh, D.C. Health Regulation Licensing Administration  
Faye Lemon - Executive Director, DHP Enforcement Division  
Ellie McCance-Katz, MD - Health Practitioner Intervention Program  
Patti Pade, MD, Health Practitioner Intervention Program  
Nancy Young – Virginian Pilot

## **PUBLIC HEARINGS**

Dr. Cothran called the public meeting to order at 8:18 a.m. and announced that comments would be taken on the following proposed regulations: 1) Mixing, diluting and reconstituting of drugs 2) Elimination of face-to-face CME requirement 3) Establishment of 10-year limitation for completion of USMLE 4) Waiver of most CME requirements for only medical examiners and 5) Fast-track for clarification of CE accrediting body.

There was no comment.

The public hearing was concluded at 8:21 a.m.

## **EMERGENCY EVAUCATION PROCEDURES**

After the roll call and declaration of a quorum, Mr. Heretick dutifully read the Emergency Evacuation Procedures.

## **APPROVAL OF THE OCTOBER 19, 2006 MINUTES**

Dr. Mosby moved to approve the October 19, 2006 minutes as presented. The motion was seconded and carried.

## **ADOPTION OF AGENDA**

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

## **INTRODUCTION OF VISITING GUESTS**

Kate Nosbisch, Deputy Director, for Practitioner Information, introduced the guests from the District of Columbia Dr. Waldu, Sr. Deputy Director, James Granger, Jr., Executive Director, DC Board of Medicine, Gregory Spurlock, Supervisory Investigator, and John Greenhaugh, Sr. Assistant Attorney General all of the District of Columbia Health Regulations Licensing Administration who attended to observe the process of the Virginia Board of Medicine. Dr. Cothran welcomed all the guests.

## **PUBLIC COMMENT ON AGENDA ITEMS**

Joe Foley, DC addressed the Board on behalf of the Virginia Society of Chiropractors to convey their opposition to any changes to the existing regulations regarding face-to-face and clinical requirements in continuing education, indicating the changes are unnecessary. Dr. Foley also commented on the PACE system which is designed to be a controlling body over continuing education and stated that it appears that it would add significant expense and bureaucracy to the process.

## **INTRODUCTION OF MS. MARSCHEAN**

Dr. Cothran introduced Amy Marschean as new counsel to the Board replacing Emily Wingfield, current Chief Deputy Director of the Department of Health Professions. Ms. Marschean stated she is looking forward to working with the Board.

## **PRESIDENT’S REPORT**

Dr. Cothran advised that Mr. Heretick presented the report of the Medical Society of Virginia annual meeting in Williamsburg in November 2006.

Dr. Cothran advised that he will be attending the Federation of State Medical Boards annual meeting in San Francisco, May 3-5, 2007. Dr. Harp stated that Dr. Cothran and Kate Nosbisch were currently approved to attend and requested any other member interested in attending to contact him.

## **VICE PRESIDENT’S REPORT**

Mr. Heretick reported on the actions of the Legislative Committee meeting held January 26, 2007 and his presentation to the Medical Society of Virginia’s House of Delegates meeting. Dr. Harp remarked that he also attended the MSV House of Delegates and was happy to report that Mr. Heretick did an outstanding job representing the Board, and that Mr. Heretick was well received.

## **SECRETARY-TREASURER REPORT**

There was no report.

## **COMMITTEE AND ADVISORY BOARD REPORTS**

Dr. Ransone moved to accept the committee and advisory board reports en bloc. The motion was seconded and carried.

## **OTHER REPORTS**

### DEA Office of Enforcement Operations - Joseph Rannazzisi

Joseph Rannazzisi, Deputy Assistant Administrator with the Office of Diversion Control of the Drug Enforcement Division, presented the Board with an in-depth look at the mission of the diversion control program. Mr. Rannazzisi covered the topics of prescription drug abuse, sources of diversion, the increase in hydrocodone distribution and usage and diversion via the Internet. Mr. Rannazzisi said the answer to illegal internet prescribing is educating the pharmacy and medical schools on the consequences of involvement and also getting legislation passed to address this issue.

Director of DHP - Sandra Ryals

Sandra Ryals, Executive Director, DHP addressed the Board and gave an informative update of the Governor's key initiatives. Ms. Ryals briefly discussed the establishment of the Health Reform Commission who will be responsible for identifying and implementing the best practices in health care at the state level in terms of access to care, improving quality and safety, providing long-term care and addressing affordability of care. Ms. Ryals informed the Board about the launching of the "Virginia Performs" interactive website that among other capabilities allows citizens to review measurable performance targets for state agencies and institutions. Ms. Ryals discussed the objective of case investigation and resolution within 250 days and requested that the Board to look at their internal process to determine where it can be improved and how to remove unnecessary blocks to ensure compliance in meeting this goal. Ms. Ryals also informed the Board about the Department of Health Profession's association and contribution to the 2-1-1 VIRGINIA program that allows patients to locate a health professional. In addition, Ms. Ryals advised the Board on the Governor's Real Estate Initiative and announced that DHP will be relocating in late summer.

DHP Enforcement Division - Faye Lemon

Faye Lemon, Director of the Enforcement Division, DHP introduced to the Board the front-line core staff involved with case investigation and compliance. Ms. Lemon informed the Board of the role of the Enforcement Division as authorized by the Code of Virginia. Ms. Lemon reviewed the statistics on complaints received and processed for 2005 and 2006 noting that even though the Board of Nursing has more licensees, the Board of Medicine receives more complaints. Ms. Lemon briefly discussed the top priorities of investigations advising that their top priority is any act of significant and substantial danger which could encompass the practitioner being impaired while on duty, standard of care allegations, sexual abuse, and suspected incompetence.

Ms. Lemon gave an overview of the steps the Enforcement Division will be taking in accomplishing the Governor's initiative of 250 days resolution. Ms. Lemon suggested that the Board consider using existing guidance documents and the Sanctioning Reference Points Manual to address those complaints such as advertising, allegations of fraud, malpractice cases, actions by other Board, etc., which would allow the Enforcement Division to concentrate on those cases that may involve patient harm.

In addressing the question of hiring qualifications for investigators, Ms. Lemon advised that they look for an individual with some investigative experience, healthcare related background and experience in law enforcement or the court system. Ms. Lemon advised that the in-house training process takes approximately 6 to 18 months and the investigator may begin with a case load of about 80.

Health Practitioners' Intervention Program - Ellie McCance-Katz, MD

Dr. McCance-Katz, Medical Director, presented the Board a condensed and informative version of the Health Practitioner's Intervention Program (HPIP). Dr. McCance-Katz reviewed several key issues including warning signs of impaired professionals, intervention, assessment and

treatment, eligibility for the program, and how HPIP accomplishes its mission. She provided data that illustrated the success of the program.

Board of Health Professions

There was no report, however, Dr. Dalton expressed a concern over the AARP report and requested that any additional information be made available to the Board. Ms. Yeatts informed the Board that AARP had in fact met with and requested staff to participate in a study that would look at the issue of continuing education and competency.

After a brief discussion, Dr. Dalton volunteered to present information on this issue to the Ad Hoc Committee on Continuing Competency at their next meeting.

Board Counsel

Ms. Marschean highlighted the legal issues of note.

Podiatry Report

No report.

Chiropractic Report

No report.

**NEW BUSINESS**

Legislative Report

Ms. Yeatts provided an up-to-date report and reviewed the regulations that concern the Board of Medicine.

Regulatory Actions

Chart of Regulatory Actions

Ms. Yeatts reviewed the chart of regulatory action and advised the Board of the status of those regulations affecting the Board of Medicine. No action was required.

Regulatory Actions

Response to Petition for Rule-making

After an in-depth discussion on this issue, Dr. Montero moved to accept the petition from the Virginia Chiropractic Association that effective July 1, 2010, all applicants for licensure in chiropractic hold a bachelor's degree from an accredited college or university prior to

matriculating in a chiropractic college. The motion was seconded. After discussion, the vote carried 9 to 5.

Adoption of a Notice of Periodic Review

Dr. Bell moved to approve the Notice of Periodic Review for 18VAC85-50-10 et seq. Regulations Governing the Practice of Physician Assistants, 18VAC85-80-10 et seq. Regulations Governing the Licensure of Occupational Therapists, 18VAC101-10 et seq. Regulations Governing the Licensure of Radiologic Technologists and Radiologic Technologists-Limited, 18VAC85-110-10 et seq. Regulations Governing the Practice of Licensed Acupuncturist and 18VAC85-120-10 et seq. Regulations Governing the Licensure of Athletic Trainers. The motion was seconded and carried.

Adoption of Final Regulations – Correction of Cites in Regulations

Dr. Bell moved to adopt final amendments to regulations as exempt actions for 18VAC85-101-10 et seq. and 18VAC90-30-10 et seq. to correct the reference to credentialing organizations. The motion was seconded and carried.

Report from the Ad Hoc Committee on Pain Management

Ms. Yeatts advised that the draft regulations were generated by the Ad Hoc Committee on Opioids and Pain Management at their January 5, 2007 meeting. Ms. Yeatts advised that the draft had been reviewed by the Legislative Committee at their January 26, 2007 meeting and was referred back to the Ad Hoc for further revision and review and no action was required at this time. Ms. Yeatts suggested that any comments regarding the draft language be sent to board staff or Dr. Cothran.

**EXECUTIVE DIRECTOR**

Revenue and Expenditures Report

Dr. Harp advised that Board is well within the budget. Dr. Harp pointed out that the last transfer to the Virginia Department of Health has been made. Ms. Yeatts cautioned that a Senate amendment to the budget says that the Board may provide funds for transfer to support scholarships.

Online Renewal Statistics

Dr. Harp provided the following on-line renewal statistics, 86% - MDs, 86% - DOs, 86% - DPMs and 83% - DCs. Dr. Harp noted the OTs topped them all with 88% on-line renewals. Dr. Harp also stated that a larger percentage of DOs responded to the workforce survey.

Letter to Delegate Morgan

Dr. Harp advised that this letter was generated at the request of the Legislative Committee as a response to Delegate Harvey Morgan's inquiry into the timely signing of death certificates by physicians. Dr. Harp also informed the Board that the Department of Health-Division of Vital Records is near completion of an educational module for practitioners on how to complete death certificates. This letter was provided for information only and no action was required.

American Academy of Dermatology Association Letter regarding Aesthetics

Dr. Harp advised this letter was the American Academy of Dermatology weighing in on the issue of cosmetics in medicine. This letter was provided for information only and no action was required.

FSMB Meeting – May 3-5, 2007

Dr. Harp informed the Board that the annual meeting of the Federation of State Medical Boards will be held in San Francisco and advised that there may be a slot still available if anyone was interested.

Appointment of Nominating Committee

Dr. Dalton, Dr. Everhart, Dr. Mosby, and Dr. Bell volunteered to serve as the nominating committee.

**PRACTITIONER INFORMATION REPORT**

Dr. Everhart moved to use confidential consent agreements for intern/residents that remain non-compliant with the profiling law and regulations. The motion was seconded and carried.

Dr. Bell moved to reject the incorporation of a field for the voluntary provision of the National Provider Identification Number (NPI) on the practitioner's profile. The motion was seconded and carried.

Ms. Nosbisch gave an update on the 2005 Random Audit, the progress of the 2007 Random Audit, current Emergency Contact Information, Website Statistics, and Profile Compliance. This was provided for informational purposes only. No action was required.

**LICENSING REPORT**

Ms. Powers presented a history of the CE audits for respiratory care and radiologic technology and informed the Board of the suggestions from the Advisory Boards on approaches to non-compliance.

Dr. Hoffman moved to accept the recommendation of the Advisory Boards of Respiratory Care to issue Confidential Consent Agreements to non-compliant licensees. The motion was seconded and carried.

Dr. Everhart moved to accept the recommendation of the Advisory Board on Radiologic Technology to send advisory letters to all non-compliant licensees along with a separate letter to Radiologic Technologists-Limited for the purpose of information and education. The motion was seconded and carried.

## **DISCIPLINE REPORT**

Ms. Deschenes reviewed the case status noting a slight increase in numbers since the last report to the Board in October 2006. Ms. Deschenes briefly mentioned ways to handle the case resolution process in order to meet the new standards and initiatives stressing that patient protection will be first and foremost.

## **GUIDANCE DOCUMENTS REGARDING THREE PAID CLAIMS**

Dr. Harp reviewed the amended version of the guidance document on Competency Assessments for Three Paid claims noting the deletion of the term “good faith” and the addition of the time frame of 12 months for the assessments. Ms. Marschean also noted that the lead in was changed to “should be followed”. Dr. Harp advised that this document captures previous discussions of the Board and what has been approved as policy and memorializes the process.

Ms. Yeatts pointed out that language was added under Completion of Assessment and Report to the Board that the assessment could lead to the initiation of a disciplinary process.

General Adams-Ender moved to adopt the amended guidance document on Competency Assessments for Three Paid Claims. The motion was seconded and carried.

## **RESOLUTION FOR FEDERATION OF STATE MEDICAL BOARD’S HOUSE OF DELEGATES**

Dr. Harp gave a brief background on the resolution identifying the two items this resolution was developed to stress: 1) identification of substance use disorders and ability to do brief interventions and 2) proper prescribing. Dr. Harp advised that as the voting delegate, Dr. Cothran will be presenting it at the House of Delegates in San Francisco.

Dr. Montero moved to approve the document as presented for submission to the Federation of State Medical Board’s House of Delegates in May in San Francisco. The motion was seconded and carried.

## **ADVISORY BOARD ON RESPIRATORY CARE LETTER TO TEACHING PROGRAMS**

Dr. Everhart moved to approve the amended letter for dissemination to the respiratory care programs. The motion was seconded and carried.

## **ANNOUNCEMENTS**

Dr. Cothran announced the resignation of Dr. Lambert.



**FINAL – APPROVED/6-21-07**

Dr. Lambert stated that he has enjoyed serving on the Board of Medicine but due to other commitments that necessitate he move on, effective March 1, 2007 he will no longer be on the Board.

Dr. Mosby expressed his personal gratitude for Dr. Lambert's dedication and contributions to the Board and remarked he will be missed.

**NEXT SCHEDULED MEETING:** June 21, 2007

**ADJOURNMENT:** With no further business to conduct, the meeting adjourned at 1:40 p.m.

/s/  
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Malcolm L. Cothran, Jr., MD  
President

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William L. Harp, M.D.  
Executive Director

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Colanthia Morton Opher  
Recording Secretary