

VIRGINIA BOARD OF MEDICINE MINUTES

Thursday, June 21, 2007

Department of Health Professions

Richmond, VA

CALL TO ORDER:

The meeting of the Board convened at 8:41 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
Valerie Hoffman, DC
Gopinath Jadhav, MD
Juan Montero, MD
Roderick Mathews, JD
Robert Mosby, MD
Karen Ransone, MD
Ellen Shapiro, DPM

MEMBERS ABSENT:

Jack Armstrong, MD
Claudette Dalton, MD
William Epstein, MD
Suzanne Everhart, DO

STAFF PRESENT:

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

OTHERS PRESENT:

Michael Jurgensen - Medical Society of Virginia
Tyler Cox - Medical Society of Virginia
Nancy Young – Virginian Pilot
Elinore McCance-Katz, MD, HPIP
Patricia Pade, MD, HPIP

PUBLIC HEARINGS

Dr. Cothran called the public meeting to order at 8:41 a.m. and announced that comments would be taken on the following proposed regulations: 1) Replacement of emergency regulations for issuance of restricted volunteer licenses and 2) Fast-Track regulations requiring licensees to document advertising claims.

There was no comment.

The public hearing on regulations was concluded at 8:45 a.m.

EMERGENCY EVAUCATION PROCEDURES

After the roll call and declaration of a quorum, Dr. Cothran read the Emergency Evacuation Procedures.

APPROVAL OF THE FEBRUARY 21, 2007 MINUTES

Ms. Burks moved to approve the February 21, 2007 minutes as presented. The motion was seconded and carried.

ADOPTION OF AGENDA

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

INTRODUCTION OF VISITING GUESTS

Dr. Harp introduced the guests in the gallery. Dr. Cothran extended the welcome.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

INTRODUCTION OF NEW BOARD MEMBERS

Dr. Cothran introduced Roderick Mathews, JD, who gave a brief synopsis of his background. Dr. Harp advised that William Epstein, MD, would be joining the Board the following work day.

PRESIDENT'S REPORT

FSMB Annual Meeting Update

Dr. Cothran advised that along with General Adams-Ender and Ms. Nosbisch, he attended the Federation of State Medical Board's (FSMB) Annual meeting in San Francisco.

Ms. Nosbisch gave a quick summary of the meeting, and they all agreed that it was one of the most informative and impressively presented conferences they had ever attended. Gen. Adams-Ender stated that one of the topics that may be of interest to the Board was the discussion on the success of the “doc-in-the-box” and how that particular area of healthcare has grown from 200 clinics to 1500 clinics in the last two years.

FSMB Resolution

Dr. Cothran stated that FSMB addressed five resolutions including Virginia’s proposal that recommends pain management be taught in medical schools. Dr. Cothran discussed a cautionary tale addressed in the cover article in *New York Times Sunday Magazine* dealing with the same subject.

Dr. Harp advised that the FSMB workgroup looked at the original structure of the resolution and thought that it should stand alone and recommended and passed a substitute resolution that states: *Resolved, that the FSMB develop methods and/or modules of information to be used to educate medical students, residents and practicing physicians regarding the identification of substance use disorders, intervention and the proper prescribing of controlled substances.*

VICE-PRESIDENT’S REPORT

Mr. Heretick reported on the actions from the Legislative Committee meeting held May 18, 2007 noting that issues from that meeting would be discussed later as part of the agenda.

SECRETARY-TREASURER REPORT

There was no report.

EXECUTIVE DIRECTORS REPORT

Revenue and Expenditures

Dr. Harp advised that the Board is operating within current budget.

Health Practitioners Intervention Program Statistics

Dr. Harp reviewed the HPIP report advising that the MDs are the most numerous profession with 110 participants.

Three Paid Claims Update

Dr. Harp stated that this report was provided for information only. Dr. Harp advised that the statistics show that surgical specialties are more heavily represented in the cohort of licensees subject to three paid claims. Dr. Harp also stated that the competency assessments are proceeding well.

New Location of DHP

Dr. Harp announced the new location for the Department of Health Profession effective August 17, 2007.

Budget Submission for 2008-2010

Dr. Harp reviewed the budget submission for 2008-2010. Dr. Harp advised that a request has been submitted for two P-14 Physician Reviewers to assist Dr. Matusiak with case review. In addition, Dr. Harp advised that budgeting for expert reviews will be maintained.

Additional Items

Dr. Harp announced that Ms. Nosbisch has been elected president-elect of the Council on Licensing, Enforcement and Regulation (CLEAR). Dr. Harp commented that Ms. Nosbisch has represented the agency and board well and she has been successful in getting Administrators in Medicine (AIM) to hold the Eastern and Southern Regions meeting in Williamsburg Fall 2007.

Dr. Harp also mentioned the glowing article written about Dr. Montero written by Nancy Young of the Virginian Pilot.

Dr. Harp then presented a plaque of appreciation to Elinore McCance-Katz, MD for the work she has done for the Board in her leadership at the Health Practitioner Intervention Program. Dr. Harp stated that Dr. McCance-Katz has brought academic rigor to the program during her tenure and congratulated her on her accomplishments.

Dr. McCance-Katz expressed her gratitude for the opportunity to work with the Board and Dr. Pade also addressed the board as the new medical director of HPIP and thanked everyone for their confidence in the program.

Ms. Ryals echoed Dr. Harp's sentiments to Dr. McCance-Katz and also extended a welcome to Dr. Pade behalf of the Board of Medicine and the Department.

Dr. Harp advised that Dr. Armstrong has announced his resignation from his seat on the Board. Dr. Harp stated that Dr. Armstrong was a tremendous asset, very judicial, a good chair of proceedings and will be greatly missed.

Dr. Harp noted that there were two vacancies on the committees as a resulted of seats vacated by Dr. Lambert (Legislative) and Dr. Armstrong (Finance).

COMMITTEE AND ADVISORY BOARD REPORTS

Ms. Burks moved to accept the Committee and Advisory Board reports en bloc with the correction to Mr. Mathews' name where noted. The motion was seconded and carried.

OTHER REPORTS

Director of DHP - Sandra Ryals

Ms. Ryals gave an update on the new era of performance leadership and key performance measures. Ms. Ryals reviewed and discussed detailed statistics on the Board's patient care case volume versus the rate of compliance with the new 250 day goal. Ms. Ryals advised that Ms. Wingfield, DHP Deputy Director and Jim Banning, Director, Administrative Proceedings Division – DHP are heading up three performance teams: 1) Intake and Investigations, 2) Old Cases and 3) Probable Cause to assist the boards with recommendations and action steps, develop a plan of action for cases 1000 days and older, and build upon analysis and recommendations already in use for probable cause.

Ms. Ryals reviewed the venue change legislation from the General Assembly, and read the language that states that effective July 1, 2007 all proceedings shall be held in the city or county where the administrative agency maintains its principal office or the parties may otherwise agree. Ms. Ryals addressed the question of "If the parties agree to hold it elsewhere would that be acceptable?" answering that this would be the exception and not the general rule.

Ms. Ryals discussed the advantages in the use of agency subordinates and shared some success stories of the Board of Nursing and advised that the Board of Medicine could triple its capacity to hear cases. Ms. Ryals went on to say that this method would relieve members of the time commitment as well as increase the Board's efficiency. Ms. Ryals stated that additionally, use of the Sanctions Reference System ensures consistency in the outcome.

Ms. Ryals distributed a press release recognizing the Sanctions Reference System as an innovative award at the Council of State Government. Ms. Ryals quoted the article as saying "the Virginia Board of Medicine was the first board in the nation in 2004 to adopt the point factor system to validate its disciplinary action based on empirical research". Ms. Ryals also noted that the Department's Sanctions Reference System is a regional finalist.

In addressing the delegation of authority issue, Dr. Harp reviewed the current bylaws, specifically A(2) "In disciplinary matters, the President shall determine probable cause with the assistance of the Executive Director, Medical Review Coordinator or other staff and Board counsel as deemed appropriate or necessary." Dr. Harp advised that the Executive Committee voted in April 2007 to recommend a change to the bylaws that would allow professional staff to recommend cases to go forward to an informal.

Ms. Burks moved to accept the recommendation of the Executive Committee to delegate probable cause to appropriate board staff. The motion was seconded and carried. Dr. Cothran noted that this motion will also serve as approval for the portion of the affected Bylaws.

Continuing with the delegation of authority, Ms. Deschenes advised that it has been the Board's unwritten policy to have cases closed by board members, but noted that there is nothing in the Code or Bylaws that makes this a requirement. Ms. Deschenes also remarked that although

there is not a guidance document memorializing this procedure, the Board's decision on this process has been captured in past meeting minutes. Ms. Marschean stated that there is no legal impediment to delegating authority to some qualified individual to close a case.

Mr. Mathews moved to delegate authority to close cases to the Executive Director and the Medical Review Coordinator. The motion was seconded.

After discussion, Mr. Mathews moved that the Executive Director and the Medical Review Coordinator be delegated the authority to determine the lack of probable cause and close cases as appropriate. The motion was seconded.

After further discussion, Dr. Clougherty moved to amend the motion to state that only priority C and D cases could be closed by staff. The motion was seconded and carried.

Subsequently, the original motion made by Mr. Mathews was seconded and carried with the understanding that the Executive Director and the Medical Review Coordinator will have the authority to close C and D cases only, and board members will continue to close As, and Bs, and review Cs and Ds as requested by staff.

NOIRA – Amendments to 18VAC85-15-10 et.seq. Regulations Governing Delegation to an Agency Subordinate

Ms. Yeatts explained that the Executive Committee voted to recommend to the Full Board the approval of a NOIRA to consider expansion of the criteria for delegation of disciplinary proceedings to an agency subordinate.

Dr. Bell moved to accept the fast-track option regarding delegation to an agency subordinate that would revise Section 18VAC85-15-50 Criteria for delegation by incorporating the language "Cases that involve intentional or negligent conduct that caused serious injury or harm to a patient may not be delegated to an agency subordinate, except as may be approved by the president of the board." The motion was seconded. After discussion, Dr. Bell withdrew the motion.

Several board members voiced concern about their comfort level in allowing a "single" board member to hear a case and make a recommendation.

Dr. Montero moved that the IFC be comprised of three persons with a minimal of one board member. The motion was not seconded.

Dr. Piness moved that the language remain as currently written. The motion was seconded. General Adams-Ender stated that she is in favor of using the single agency subordinate.

Dr. Mosby stated that the consensus of the Board was not to expand the criteria for delegation of authority for disciplinary cases and called for the question.

The motion made by Dr. Piness was passed 13 to 1.

Ms. Burks moved to delegate to the Executive Director and the Deputy Executive Director for Discipline final approval of PHCOs regardless of the case category. The motion was seconded and carried.

Ms. Burks moved to delegate the CCA approval process to the Executive Director and Deputy Executive Director for Discipline. The motion was seconded and carried.

NEW BUSINESS

Chart of Regulatory Actions

Ms. Yeatts provided a summary of where the actions are at this time.

Regulatory Actions

Adoption of Final Regulations for 18VAC85-20 – Mixing, diluting and reconstituting; Elimination of face-to-face requirement; Waiver of CME for medical examiners; and Completion of USMLE within 10 years; Adoption of Final Regulations for 18VAC85-40 – Clarification of requirements for reinstatements and, Adoption of Final Regulations for 18VAC85-120 – On-site supervision of provisional licensees

General Adams-Ender moved to approve en bloc. The motion was seconded. After discussion, the motion was carried.

Adoption of Final Exempt Amendments for Regulations for Reporting of Paid Claims

Dr. Bell moved to adopt final amended regulations to establish criteria for reporting of malpractice paid claims on the Physician Profile System. The motion was seconded and carried.

Implementation of HB2157

Ms. Yeatts advised that effective July 1, 2007 if a notice and order did not result in disciplinary action by the board at the conclusion of a hearing, the notice and order will not be posted on the BOM website, but there will be an indicator that public information is available. Ms. Yeatts explained that if a licensee has a notice and order already posted that did not result in disciplinary action, the licensee may submit a written request asking that information be removed.

Proposed Regulations of Pain Management

Dr. Hoffman moved to adopt the proposed regulations for pain management as presented. The motion was seconded and carried.

Proposed Fast-Track Regulation – Clarification requirements for nurse practitioners with Prescriptive Authority practicing with and/or supervised by physicians

Dr. Bell moved to adopt proposed regulations for Chapter 4, Regulations Governing Prescriptive Authority for Nurse Practitioners and to promulgate the amendments under a fast-track action. The motion was seconded and carried.

Adoption of Fast-Track Regulations – Adoption of Fast-track Regulations for Delegation to an Agency Subordinate for cases involving a nurse practitioner

Dr. Hoffman moved to adopt regulations for delegation to an agency subordinate for cases involving nurse practitioners by a fast track action. The motion was seconded and carried.

Revision of Guidance document for nurse practitioners jointly licensed by the Board of Nursing and Medicine

Dr. Ransone moved to approve the guidance document as presented. The motion was seconded and carried.

Adoption of Final Regulation for Collaborative Practice Agreements with the Board of Pharmacy

Dr. Bell moved to adopt final regulations for collaborative practice agreements jointly with the Board of Pharmacy.

NOIRA – Amendments to 18VAC85-15-10 et. seq. Regulations governing delegation to an agency subordinate

Ms. Marschean stated that, as a point of clarification, Dr. Montero's frame work for allowing an agency subordinate be more than one person is acceptable. Dr. Montero's previous motion to adopt a NOIRA to amend regulations for delegation of fact-finding proceedings to an agency subordinate was re-introduced and seconded. After discussion, it was defeated.

Report of the Ad Hoc Committee on Direct Access for Physical Therapists

Ms. Yeatts stated that this report was being provided as required by statute, and did not require action by the Board.

Ms. Yeatts advised that the Committee met on May 11, 2007 and is recommending the educational training and experience requirements necessary for a physical therapist to obtain certification for direct access as noted on page 180 of the agenda book.

There was no discussion or comments from the Board.

Adoption of proposed bill for the 2008 Session of the General Assembly

Dr. Ransone moved to adopt the legislative proposal and to circulate for public comment by August 1, 2007. The motion was seconded and carried.

Adoption of Guidance Documents – Licensed Midwives

Dr. Ransone moved to accept the two documents as guidance of the Board of Medicine for posting on the Board's website under Guidance Documents. The motion was seconded and carried.

Bylaws

Dr. Harp pointed out, for discussion, the proposed changes to the current Bylaws. After discussion, the document was amended and accepted with the following motions:

Dr. Piness moved to amend Article II (C) to say "the secretary-treasurer shall, in consultation with the president, appoint the Finance Committee..." The motion was seconded and carried.

General Adams-Ender moved that as amended, the proposed bylaws with amendments be accepted. The motion was seconded and carried.

Three Paid Claims Report Form

Dr. Harp advised that the form was developed as a tool for evaluators to assist in providing information to Board in a uniform manner. Dr. Bell moved to accept the form as presented. The motion was seconded and carried.

Occupational Therapy

Ms. Powers advised that the Advisory Board on Occupational Therapy reviewed the results of the 2004 renewal audit and recommends to the Board that CCAs be offered to those that are non-compliant with a deadline for completion. Dr. Hoffman moved to approve the recommendation of the Advisory board. The motion was seconded and carried.

Practitioner Information Report

Ms. Nosbisch reviewed the compliance statistics and advised that there are approximately 60 intern/residents being offered CCAs for non-completion of profiles. Ms. Nosbisch also mentioned that for fiscal year 2007, we will break our previous records of consumer visits to the profile website.

Discipline Report

Ms. Deschenes addressed the trends in case load and stated that the report was provided for information only.

Nominating Committee Report

Dr. Bell announced that the slate of officers being presented for consideration is as follows: Stephen Heretick, JD, President, Robert Mosby, Jr., MD, Vice-President, and Jane Piness, MD, Secretary/Treasurer.

Dr. Montero moved that the nominations be closed. The motion was seconded and carried.

Dr. Montero moved that the nominations be accepted by acclamation. The motion was seconded and carried.

Dr. Harp advised that he received a letter from Oliver Smith, Jr., DC and President of the Chiropractic Licensing Board written to Governor Kaine stating in part that "the Virginia Board of Medicine is to be commended for its commitment to protecting the health, safety and welfare of citizens... also, special recommendation is to be given to Valerie Hoffman, DC".

Assistant Attorney General Report

Amy Marschean, AAG reported that Dr. Abofreka lost his case against the Board at the circuit court level. Also, Ms. Marschean noted that Dr. Alvir filed a petition for appeal that was not properly served which became moot May 2007.

Ishnelia Moore, AAG reported that Dr. Vuyyuru's attorney has filed a timely appeal and she will be responding to his filing by July 16, 2007.

ANNOUNCEMENTS

Dr. Cothran advised that PHCO and licensing cases will be heard at the conclusion of the meeting.

NEXT SCHEDULED MEETING: October 18, 2007

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

Malcolm L. Cothran, Jr., MD
President

William L. Harp, M.D.
Executive Director

Colanthia Morton Opher
Recording Secretary