

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

February 14, 2019

Department of Health Professions

Henrico, VA 23233

CALL TO ORDER: Dr. O'Connor called the meeting to order at 8:31 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
David Archer, MD
James Arnold, DPM
Manjit Dhillon, MD
Alvin Edwards, PhD
David Giammittorio, MD
Jane Hickey, JD
L. Blanton Marchese
Jacob Miller, DO
Karen Ransone, MD
Brenda Stokes, MD
David Taminger, MD
Svinder Toor, MD
Kenneth Walker, MD
Martha Wingfield

MEMBERS ABSENT: Syed Ali, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Colanitha M. Opher, Deputy Executive Director, Administration
Barbara Matusiak, MD, Medical Review Coordinator
Cheryl Clay, Administrative Assistant
Tearia Davis, Administrative Assistant
Linda Hutson, Administrative Assistant
Barbara Allison-Bryan, MD, DHP Deputy Director
Elaine Yeatts, DHP Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Lauren Bates-Rowe, MSV
Jerry Canaan, Hancock Daniel
Kathy Martin, Hancock Daniel

EMERGENCY EGRESS

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

APPROVAL OF THE OCTOBER 18, 2018 MINUTES

Dr. Edwards moved to approve the minutes as presented; the motion was properly seconded and carried unanimously.

ADOPTION OF THE AGENDA

Dr. Harp requested that the agenda be amended to include Nursing's Guidance Documents 90-33 and 90-53. Dr. Tuck moved to accept the agenda as amended; the motion was properly seconded and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

There was no public comment.

PHYSICIAN WORKFORCE REPORT – Elizabeth Carter, PhD

Dr. Carter provided an updated report on Virginia's Physician Workforce. She briefly reviewed the Workforce Data Center resource sheet that included helpful information and websites such as Virginia Careforce Snapshots, Trends in Healthcare Workforce Full Time Equivalency Units, and Student Choice.

Dr. Carter noted that since 2014, there have been very few changes in the survey. She said that there has been a significant increase in the number of survey respondents and therefore the physician workforce data. She also said that there is a slight increase in gender and racial diversity in the physician population.

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

Dr. Allison-Bryan provided a timeline on the development and implementation of the laws and regulations governing the prescribing of opioids and their impact on the opioid crisis in Virginia. She said opioid use has dropped by 51% since 2016, and there has been a slight decline in opioid deaths since 2018. Dr. Allison-Bryan also noted an increased number of calls from patients claiming abandonment by their practitioner that have been providing pain management. She emphasized that the regulations do not prohibit a practitioner from writing opioids, but there are parameters to follow for safe and effective prescribing. She also advised that the PMP is now interoperable with 30 other states and recently went live with the Department of Defense.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT

Dr. O'Connor had no report.

VICE-PRESIDENT'S REPORT

Dr. Tuck had no report.

SECRETARY-TREASURER'S REPORT

Dr. Conklin had no report.

EXECUTIVE DIRECTOR'S REPORT

Dr. Harp went over the Board's Revenue and Expenditures, HPMP Participation, Enforcement and APD utilization reports. Dr. Archer inquired about the average cost per hour for investigation. Ms. Deschenes advised that the Board spends approximately \$1,000,000 annually for investigative services.

Dr. Harp said the Annual Meeting of the Federation of State Medical Boards will be held in Fort Worth, Texas April 24-27 and asked anyone interested in attending to let Board staff know as soon as possible.

COMMITTEE and ADVISORY BOARD REPORTS

Dr. O'Connor mentioned the Ad Hoc Committee on Controlled Substances Continuing Education meeting minutes of November 27, 2018. The purpose of the meeting was to identify the licensees required to obtain 2 hours of opioid continuing medical education for the next biennium. It was decided that all licensees with prescriptive authority would again be required to obtain 2 hours. Dr. O'Connor noted that the work done by Dr. Harp to create a 2-hour "package", which includes reading the regulations, should help address some of the myths about prescribing opioids in Virginia.

Ms. Deschenes requested that the Radiologic Technology meeting minutes be corrected to include her attendance.

Dr. Edwards moved to approve the Committee and Advisory Board Reports with the above amendment; the motion was seconded and carried unanimously.

OTHER REPORTS

Board Counsel

Ms. Barrett 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 additional report.

Podiatry Report

Dr. Arnold had no report.

Chiropractic Report

Dr. Tuck had no report.

Committee of the Joint Boards of Nursing and Medicine

No additional report.

New Business:

1) Regulatory and Legislative Issues

2019 Report of the General Assembly

Ms. Yeatts reviewed the bills in the 2019 Session of the General Assembly relevant to the Board of Medicine. She highlighted the following bills:

- HB 1952 Patient care team; podiatrists and physician assistants
- HB 1970 Telemedicine services/ payment and coverage of services
- HB 1971 Health professions and facilities; adverse action in another jurisdiction
- HB 2169 Physician assistants; licensure by endorsement
- HB 2184 Volunteer license, special; issuance for limited practice
- HB 2228 Nursing and Psychology; Board of; health regulatory boards, staggered terms
- HB 2457 Medicine, osteopathy, podiatry, or chiropractic, practitioners of; inactive license charity care – this will allow the practitioner to be compensated for patients requiring home health care.
- HB 2557 Drug Control Act; classifies gabapentin as a Schedule V controlled substance – Ms. Yeatts noted that gabapentin is the most prescribed controlled substance.
- HB 2559 Electronic transmission of certain prescriptions; exceptions – Ms. Yeatts advised that the process will become effective in 2020, and all the Boards will adopt emergency regulations with the allowance of a 12-month compliance window.
- HB 2731 Lyme disease; disclosure of information to patients – Ms. Yeatts stated that this no longer affects practitioners; the responsibility now rests with the laboratory.
- SB 1004 Health care services; payment estimates – Ms. Yeatts advised that this bill requires

---FINAL APPROVED---

- practitioners to provide patients an estimate of charges for services only provided by their office.
- SB 1167 Medicaid recipients; treatment involving opioids or opioid replacements, coverage of health care
- SB 1439 Death certificates; medical certification, electronic filing – Ms. Yeatts stated this bill amends Section 54.1-2915 Unprofessional Conduct to say that failure to complete a death certificate may subject the practitioner to disciplinary action. Dr. Walker stated that, as an FYI, those practitioners who are not using Microsoft products might experience problems with the electronic form.
- SB 1547 Music Therapy; Board of Medicine to regulate practice – Ms. Yeatts stated that BHP is to do a study.

Ms. Yeatts then said that SB 1760 Diagnostic X-ray machines; operation of machine; SB 1778 Health regulatory boards; and conversion therapy bills have been tabled. She added that it has been left to the boards to define what constitutes conversion therapy and the necessary regulation. She noted that the Board of Psychology has developed a guidance document to address this topic.

- Regulatory Actions – Chart of Regulatory Actions as of February 4, 2019

Ms. Yeatts covered the Board’s current regulatory activity and the stages of the process for each.

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

- Adoption of proposed regulations for autonomous practice for nurse practitioners

Ms. Yeatts reviewed the emergency regulations that went into effect January 7, 2019. She stated that there was no public comment received and that the proposed regulations were identical to the emergency regulations.

Dr. O’Connor added that a great deal of time and negotiation were necessary to arrive at the final version of the regulations.

MOTION: After a brief discussion, Dr. Walker moved to adopt the proposed regulations as presented; the motion was properly seconded and carried unanimously.

- Adoption of Final Regulations - Direction and supervision of laser hair removal by nurse practitioners , Direction and supervision of laser hair removal by doctors and physician assistants

Ms. Yeatts advised that these regulations set out the requirements for who can perform this service and under what circumstances.

MOTION: After a brief discussion, Dr. Edwards moved to adopt the final regulations as presented. The motion was properly seconded and carried unanimously.

- Board of Nursing Guidance Document 90-33 – Authority of Licensed Nurse Practitioners to write Do Not Resuscitate Orders

Ms. Yeatts informed the Board members that this document has been amended to include nurse practitioners in autonomous practice.

- Board of Nursing Guidance Document 90-53 – Treatment by Women’s Health Nurse Practitioners of Male Clients for Sexually Transmitted Diseases

Ms. Yeatts advised that this document was reaffirmed by the Board of Nursing with no amendments.

MOTION: The Board accepted both Guidance Documents by unanimous vote.

2) Licensing of Nuclear Medicine Technologists and Radiation Therapists

Staff note from the agenda packet:

In 1994, the General Assembly established the profession of radiologic technology for those individuals trained to use equipment that apply x-rays to human beings. The regulations became effective in December 1996, but it was not until 2001 that the Board began to enforce the requirement to have a license to practice radiography outside a hospital. Since that time, for licensure the Board has been issuing Consent Orders that grant the license and impose an immediate reprimand to acknowledge an unlicensed period of practice. The Board still issues many Consent Orders each year to rad techs that: 1) have practiced in clinics and doctors' offices; 2) worked in a hospital for years and transitioned to outpatient without obtaining a license; 3) were placed in a hospital setting by a staffing company, were not employees of the hospital, and were paid by the staffing company.

The credentialing body that the Board of Medicine regulations rest upon is the American Registry of Radiologic Technologists (ARRT). The ARRT examination is the foundation for licensure, and evidence of passing the exam is a requirement for licensure. Over the years, ARRT has added more credentialing categories, including radiation therapists and nuclear med techs. In 2015, the General Assembly added "therapeutic" to the scope of radiologic technology ("Practice of radiologic technology" means the application of ionizing radiation to human beings for diagnostic or therapeutic purposes.), which authorized the Board to license radiation therapists and nuclear med techs.

The Advisory Board on Radiologic Technology discussed the impact that the authorization, and the requirement, of licensure for radiation therapists and nuclear med techs would have. A member of the Advisory Board offered to provide a list of programs to Board staff so letters could be sent to the directors advising them of the requirement for licensure, who in turn would advise their students. It cannot be ascertained that the letter ever went out. However, it would appear that radiation therapists and nuclear med techs are beginning to hear about and apply for a license from the Board.

What Board staff recommends is to license, without Consent Orders, those radiation therapists and nuclear med techs that qualify for a license who have been practicing in Virginia. Although a letter to the program directors will help spread the word about licensure, it is likely that many radiation therapists and nuclear med techs are working in hospitals and physician practices across the state beyond the reach of program directors. Therefore, bringing this matter to the attention of those that hire these professionals is seen as necessary. To that end, an item will go out in the next several Board Briefs noting that a license is required to practice radiation therapy and nuclear medicine technology.

As the Board has traditionally granted a one-year grace period after regulations become effective, Board staff would suggest that the process of issuing licenses without Consent Orders for radiation therapists and nuclear med techs run for the next year.

MOTION: After a brief discussion, the Board unanimously agreed to grant a one-year grace period without a reprimand for radiation therapists and nuclear med techs. Staff was instructed to use reasonable methods to get the word out about the licensure requirement.

3) Regulatory Advisory Panel for Mixing, Diluting or Reconstituting (MDR) of Drugs for Administration

Staff Note from the agenda packet:

In 2005, when the General Assembly carved out compounding in doctors' practices from oversight by the Board of Pharmacy and placed it with the Board of Medicine, regulations had to be promulgated. An Ad Hoc Committee that included pharmacists and physicians relied upon United States Pharmacopeia (USP) Chapter 797 as the basis for Medicine's MDR regulations.

Chapter 797 is the Pharmaceutical Compounding of Sterile Preparations, and it can be amended from time to time. An additional USP chapter has been in development, Chapter 800, which addresses the Handling of Hazardous Drugs in Healthcare Settings.

Revisions to Chapter 797 and the advent of Chapter 800 are both scheduled for December 1, 2019. The Board of Medicine wants to stay current with USP requirements, and therefore Board staff recommends the formation of a Regulatory Advisory Panel (RAP) to review 797 and 800 and suggest revisions to the language of 18VAC85-20-400 et seq. as seen fit.

Dr. O'Connor appointed the following as members to serve on this panel:

- Syed Ali, MD
- Lori Conklin, MD
- Blanton Marchese
- Karen Ransone, MD
- Kenneth Walker, MD

4) Appointment of the Nominating Committee

Dr. Harp advised that the new officer terms begin after the June Board meeting, and a slate for the 2019-2020 will need to be developed.

Dr. O'Connor appointed Syed Ali, MD, Kenneth Walker, MD and Martha Wingfield to serve as this year's Nominating Committee.

5) Licensing Report

Dr. Harp provided a brief overview of the current licensing process and the licensee count.

This report was for informational purposes only.

ACTION: Dr. Archer asked that at the next meeting of the Board, staff provide the qualifications for a radiation therapist.

6) Discipline Report

Ms. Deschenes went over the status of pending cases at the Board, APD and Enforcement levels. She advised that the Board's numbers are up and that 120 advisory letters have been issued. She asked the members to be mindful that the decision to close an investigation as No Violation be substantiated by the facts in the case.

– Presentation of Consent Orders

Ms. Deschenes presented two Consent Orders for the Board's consideration. She also asked that the Board allow staff to issue Consent Orders for Virginia licensees affected by a Maryland revocation for failing to get a criminal background check in a timely manner.

Mr. Canaan addressed the Board and summarized the issue with the Maryland revocations.

MOTION: After some discussion, Dr. Ransone moved to reinstate a license affected by the above circumstances with no sanction by the Board, and to give staff the authority to address any future actions of a similar nature. The motion was seconded and carried unanimously.

7) Announcements

Next meeting of the Board is June 13-15, 2019

Travel vouchers for today's meeting are due by March 13, 2019.

Dr. Harp requested the return of all Board-issued access badges and provided instructions on how to gain access to the building and floors at future meetings.

8) Adjournment

With no other business to discuss, Dr. O'Connor adjourned the meeting of the Full Board at 10:25 a.m.

Kevin O'Connor, MD
President, Chair

William L. Harp, MD
Executive Director

Colanitha Morton Opher
Recording Secretary