

State Board of Health
Minutes
October 24, 2016 – 9:00 a.m.
Four Points by Sheraton, 4700 South Laburnum Avenue
Richmond, Virginia 23231

Members present: Bruce Edwards, Chair; Brad Beall; Theresa Brosche; Tommy East; Jim Edmondson; Megan Getter; Linda Hines; Wendy Klein, MD; Hank Kuhlman; Benita Miller, DDS; Faye Prichard; Holly Puritz, MD; Jim Shuler, DVM; Stacey Swartz, PharmD; and Mary Margaret Whipple

VDH staff present: Dr. Marissa Levine, State Health Commissioner; Dr. Hughes Melton, Chief Deputy Commissioner; Joe Hilbert, Director of Governmental and Regulatory Affairs; Catherine West, Administrative Assistant; Cathy Peppers, Administrative Assistant; Maribeth Brewster, Risk Communications Manager; Erik Bodin, Director, Office of Licensure and Certification; Kim Beazley, Assistant Director, Office of Licensure and Certification; Domicia Winstead, Policy Analyst, Office of Licensure and Certification; Susan Puglisi, Policy Analyst, Office of Family Health Services

Others Present: Cynthia Bailey, Office of the Attorney General; Ron Clements, Assistant Building Official, Chesterfield County Department of Building Inspection

Call to Order

Mr. Edwards called the meeting to order at 9:00 a.m. Ms. Prichard led those in attendance in the pledge of allegiance.

Welcome and Introductions

Mr. Edwards thanked the Board members for arranging their schedules to be able to be in attendance at this called meeting. Mr. Edwards then welcomed the large turnout of members of the public to the meeting. He reminded the public to maintain appropriate decorum during the meeting. In particular, Mr. Edwards asked the audience to be polite and to please refrain from waving of hands and signs. Mr. Edwards said that members of the audience would be given an opportunity to display their signs during the public comment period. Mr. Edwards stated that those members of the public that are disruptive during the meeting will be escorted out by security.

Following introductions, Mr. Hilbert reviewed the agenda and the items contained in the Board's notebooks. The agenda was approved by unanimous consent. Mr. Edwards also told the Board that, depending on how long the meeting lasted, he would insert breaks as needed.

Public Comment Period

Mr. Edwards told the public that the Board's public participation policy allows a 20 minute public comment period with a two minute limit for each speaker. Mr. Edwards said that the

chair would entertain a motion to extend the time for the public comment period in order for the Board to hear from as many individuals who have signed up to speak as possible. Mr. Edmondson moved that the comment period be extended from the standard 20 minutes to two hours. Mr. Beall seconded the motion. Dr. Shuler asked if this time would allow public comment to be equally distributed between the two sides and Mr. Edwards answered that the belief was that it would. The motion was adopted unanimously by a voice vote.

Mr. Edwards then outlined the procedure for the public comment period. In order to maximize the number of people that could speak, Mr. Edwards said that Mr. Hilbert would call the name of the speaker and an on-deck name for the next speaker. Mr. Edwards asked that speakers comply with the two minute time limit. He also stated that any person signed up to speak could cede their time slot to another individual. Finally, he asked that speakers not be unduly repetitive of what other speakers have already said.

Fifty-seven individuals signed up to speak during the public comment period. Senator Amanda Chase and 52 other individuals spoke during the public comment period; all comments were about the final amendments to the Regulations for Licensure of Abortion Facilities. Thirty individuals spoke in support of the final amendments. Twenty-two individuals spoke in opposition to the final amendments. Two individuals signed up to speak did not respond when their name was called. Two individuals declined to speak.

Senator Chase commented that she hoped the Board would respect the law and promulgate regulations in accordance with law. She stated that the regulations should not be weakened. She also said that we need to improve health for women.

Comments by the individuals who spoke in support of the final amendments to the abortion facility regulations included that regulations need to be science based; parts of the regulation that are unconstitutional in light of the recent Supreme Court decision in *Whole Woman's Health v. Hellerstedt* need to be stricken; and that the final amendments to the regulations promote access to care for women.

Comments by the individuals who spoke in opposition to the final amendments to the abortion facility regulations included opposition to the removal of reference to Centers for Disease Control and Prevention (CDC) guidelines for infection control; opposition to removal of the requirement for transfer agreements; that the Board is acting outside the scope of the Notice of Intended Regulatory Action (NOIRA); that the Board is not following the Administrative Process Act (APA) in promulgating the final amendments to the regulations; that only a court can determine what is "undue burden" with respect to *Hellerstedt*; and that the abortion regulations should not be weakened. One of these individuals also spoke against abortion.

Following the final speaker, Mr. Edwards asked that those individuals who support the final amendments to the regulations stand and hold up any signs that they had. He then asked that group to be seated and asked that those individuals who oppose the final amendments to the regulations stand and hold up any signs that they had. He then asked that group to be seated. Mr. Edwards then declared the public comment period to be ended and thanked the members of the audience for their input.

Regulatory Action Items

Regulations for Licensure of Abortion Facilities (12VAC5-412) – Final Amendments

After a break, Mr. Edwards said that the Board would be considering the final amendments to the Regulations for Licensure of Abortion Facilities (12VAC5-412). He told the Board that Robert's Rules of Order would be followed. Before asking Dr. Levine to present the final amendments to the Board, Mr. Edwards asked if Ms. Bailey could speak to the Board about her two memoranda concerning *Hellerstedt*. The Board approved by unanimous consent to waive the confidential attorney-client privilege nature of the memoranda so that Ms. Bailey could discuss the memoranda in public.

Ms. Bailey told the Board that the Office of the Attorney General (OAG) had advised VDH that provisions in the proposed amendments that are similar to building standards for ambulatory surgery centers would most likely not survive a constitutional challenge and should be deleted. In addition, based on the undue-burden standard set by the Supreme Court, the OAG had also advised VDH to review the regulations to consider whether the provisions are necessary to protect a woman's health and, if so, consider whether the provisions otherwise impose an undue burden on a woman's right to obtain an abortion. Based on this review, additional amendments were made to the proposed amendments which were approved at the September 2015 Board meeting. She told the Board that "undue burden" means to place a substantial obstacle to a woman seeking an abortion. Ms. Bailey stated that while the Board is considering the amendments that VDH has proposed, that the OAG recommended, and any additional amendments proposed by members, that it should be mindful of the undue burden standard. If the Board remains mindful of this, the regulations will be in the best position to withstand a constitutional challenge.

Dr. Levine presented the final amendments. She told the Board that the proposed amendments that were approved by the Board in September 2015 went through executive branch review, whereupon the Governor recommended some additional amendments for the Board to consider. The proposed amendments were subsequently published in the Virginia Register of Regulations for a 60 day public comment period.

Dr. Levine told the Board that, after review by VDH based on legal advice from the OAG in light of the *Hellerstedt* decision, VDH recommends nine additional amendments to the regulations.

Dr. Levine said that VDH recommends amending 12VAC5-412-370 by striking most of the regulatory language adopted by the Board in 2015 and replacing it with "All construction of new buildings and additions, or major renovations to existing buildings for occupancy as an abortion facility shall comply with all applicable state and local codes and ordinances." Dr. Levine told the Board that, should the proposed amendment be approved, an abortion facility would still be required to have a valid certificate of occupancy issued by the local building official.

Dr. Levine told the Board that VDH recommends repealing Section 360 Firefighting Equipment and Systems. Compliance with all applicable state and local codes and ordinances would still be

required pursuant to Section 370 C as amended. This would include the requirement for facilities to comply with the Virginia Statewide Fire Prevention Code (§ 27-94 et seq. of the Code of Virginia).

Dr. Levine told the Board that VDH recommends amending Section 350 Maintenance by striking subsection A. Compliance with all applicable state and local codes and ordinances would still be required pursuant to Section 370 as amended.

Dr. Levine told the Board that VDH recommends amending Section 220 Infection Prevention, subsection A, by striking the specific reference to the CDC Guide for Infection Prevention in Outpatient Settings. Facilities would still be required to have an infection prevention plan, and comply with the remaining infection prevention provisions of Section 220. Dr. Levine also told the Board that this proposed amendment does not change VDH's expectation that a physician, nurse, or other health care professional will adhere to established standards of practice.

Dr. Levine told the Board that VDH recommends amending Section 200, Patients' Rights, subsection A, by striking the specific reference to the Joint Commission Standards of Ambulatory Care. Facilities would still be required to establish a protocol relating to patient rights and responsibilities, and comply with the remaining Patients' Rights provisions of Section 200. Dr. Levine also told the Board that this proposed amendment does not change VDH's expectation that a physician, nurse, or other health care professional will adhere to established standards of practice.

Dr. Levine told the Board that VDH recommends amending Section 100 On-Site Inspection by striking subsection C. Facilities would still remain subject to onsite inspections, and would have to comply with the remaining onsite inspection provisions of Section 100. Dr. Levine explained that VDH's other health care facility licensure regulations (i.e., hospital, nursing home, hospice, and home care) simply contain a requirement to provide "any necessary records" which includes patient records.

Dr. Levine told the Board that VDH recommends amending Section 10 Definitions by striking the definitions of Medication Induced Abortion and Surgical Abortion. The only reference to these two definitions is found in Section 370 Local and state codes and standards. If the proposed amendments to Section 370 are adopted, the defined terms would no longer appear in the regulations and would, therefore, be unnecessary.

Dr. Levine told the Board that VDH recommends amending the Documents Incorporated by Reference to strike *Guidelines for Design and Construction of Health Care Facilities*, *Guide to Infection Prevention for Outpatient Settings: Minimum Expectations for Safe Care, 2015 Standards for Ambulatory Care, Rights and Responsibilities of the Individual*, and *Sexually Transmitted Diseases Treatment Guidelines*. If the proposed amendments to the regulations are adopted, references to these specific documents would no longer be necessary.

Dr. Levine told the Board that, should it approve the final amendments, they would be submitted to the OAG to begin the Executive Branch review process. Following Executive Branch review and approval by the Governor, the final amendments will be published in the Virginia Register of

Regulations and on the Virginia Regulatory Town Hall website and a 30 day final adoption period will begin. At the close of the final adoption period, the final amendments will become effective.

Ms. Hines moved that the final amendments be approved with Mr. Edmondson seconding the motion.

Ms. Brosche told the Board that before the Board begins the process of approving the final amendments, many amendments exceed the NOIRA and that the Board has not fully followed the APA process. Mr. Beall and Mr. Kuhlman expressed their agreement with Ms. Brosche's statements. Mr. Kuhlman also indicated that one of the deficiencies noted in facility inspection reports was about narcotics being mishandled, which he said indicates the need for additional regulatory requirements in that area. He said that the NOIRA approved by the Board indicated that amendments would be made to the section of the regulations relating to Administration, Storage and Dispensing of Drugs, but that did not occur. Mr. Kuhlman said that simply stating that there are statutory requirements that govern the handling of narcotics is not sufficient. Mr. Kuhlman asked how statutory requirements are enforced if they are not referenced in regulatory provisions. Mr. Kuhlman stated that not providing regulatory provisions concerning handling of narcotics modifies the behavior of facilities during the inspection process.

Dr. Levine stated that none of the proposed amendments alter the requirement for on-site facility inspections. She also told the Board that both federal and Virginia law are adequate with regard to the handling of narcotics within facilities. If VDH identifies a problem in this area during an inspection, a referral is made to the appropriate regulatory entity. Mr. Kuhlman asked if such a referral had ever been made by VDH. Dr. Levine responded that such a referral has been made.

Ms. Getter told the Board that removal of some of the provisions of the regulations would mean that surveyors will not be looking at those items during inspections. She also voiced her agreement with Ms. Brosche's statement that the final amendments exceed the scope of the NOIRA.

Mr. Edwards explained the process for making motions for amendments, primary amendments, and secondary amendments. He asked if the Board would want to consider a time limit on debate for each amendment. Mr. Beall indicated that he did not believe that would be appropriate. There was no further discussion of a time limit. Mr. Edwards told the Board that the final amendments would be reviewed section by section. He also told the Board that any affirmative vote to any additional motions by the Board would append that amendment to the main motion on the floor.

Ms. Prichard asked that VDH staff be directed to make any wordsmithing corrections to the final amendments on any non-substantive changes. Mr. Beall said that as words do give a particular meaning, this should be considered in context, on a case-by-case basis. There was no further discussion on this topic.

Ms. Getter asked that the minutes reflect the person and what their vote is on votes taken by voice or by a show of hands. Mr. Edwards indicated that most of the voting that would occur during this meeting would be a roll-call vote.

Ms. Whipple made a motion to remove the definition of “first trimester” in 12VAC5-412-10. Dr. Klein seconded the motion. Ms. Whipple told the Board that this definition does not meet the current standard and is contained in a different part of the regulations. There was a discussion of whether or not the definition needed to be included in the definitions section of the regulations (12VAC5-412-10) even if it is included in another section of the regulations. There was also discussion that there was expected to be another amendment offered which would include the definition in 12VAC5-412-230. There was further discussion about voting to eliminate this wording in 12VAC5-412-10 when the motion to amend 12VAC5-412-230 was presented to the Board in later discussions. Ms. Brosche moved to table the motion with Mr. Beall seconding the motion. The motion to table the motion was approved unanimously by voice vote.

Ms. Brosche made a motion to add the words “and 16.1-241” between the words “18.2-76” and “Code of Virginia” in the definition of informed consent in 12VAC5-412-10. Ms. Prichard seconded the motion. Ms. Whipple asked that section of the Code of Virginia be read to the Board. There was a discussion that this section of the Code applies to minors and that the reason for the motion is for clarity and not to impose an obstacle in the regulations. Ms. Bailey told the Board that the two Code sections reference two different procedures; one is in reference to informed consent at the facility and the other is in reference to when a judge authorizes an abortion for a minor without consent. Section 16.1-241 would be the governing provision when a minor wants to seek a procedure without a parent’s consent. Mr. Bodin told the Board that when VDH inspects a facility, it does look at whether a court order is in any given file. Ms. Bailey told the Board that the court order does not require notarization, which Mr. Beall disagreed with. Ms. Whipple commented that the use of the word “and” means that informed consent for a woman of any age would have to meet both Code sections. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 11 nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Getter made a motion to restore 12VAC5-412-30 in the final amendments so that the section remains as it is in the current regulations. This section deals with the classification of abortion facilities as a category of hospital. Mr. Kuhlman seconded the motion. There was discussion that this section should not be in the regulation because appropriate reference is made in the Code of Virginia. Ms. Getter stated that absent specific information in the regulations, building code specialists and architects are not aware of the requirement, that there is no guidance in the regulations, and all sections referring back to the Code of Virginia are being removed.

Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 11 nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Whipple made a motion to amend 12VAC5-412-80 on allowable variances by striking all of the existing language and inserting the following language:

- A. Upon the finding that the enforcement of one or more of these regulations would be clearly impractical, the commissioner shall have the authority to waive, either temporarily or permanently, the enforcement of one or more of these regulations, provided safety and patient care and services are not adversely affected.
- B. Modification of any individual standard herein, for experimental or demonstrative purposes, or any other purposes, shall require advance written approval from the OLC.

Mr. Edmondson seconded the motion. Mr. Beall asked for the rationale for the change and Ms. Whipple answered that the new language allows the commissioner to grant permanent variances. Mr. Beall told the Board that “finding” was not defined; that giving the authority to allow permanent variances amends the regulations without going through the APA; that this change should not be considered; that this amendment is outside the scope of the NOIRA; and that this is outside the scope of the Board’s authority.

There was a discussion that the wording of this amendment is consistent with the wording for allowable variances in the regulations that govern hospitals; that the only variances granted to-date were in conjunction with building requirements; and that the wording as currently in the regulation is consistent with wording in the regulations that govern home health care. There was further discussion that abortion facilities are not accredited as are hospitals; and that hospitals are only inspected in conjunction with complaints filed against them.

Mr. Beall told the Board that the proposed amendment has not been recommended by VDH; was not recommended by the advisory panels appointed by the Commissioner prior to the approval of the proposed amendments to the regulation; and exceeds the scope of the NOIRA. There was discussion about the words “experimental or demonstrative purposes.” Ms. Whipple told the Board this meant that approval is needed for any modification of a standard and that the need for the change had to be demonstrated.

Ms. Hines made a secondary motion to remove the words “experimental or demonstrative purposes, or” between “individual standard herein, for” and “shall require advance written.” The sentence now reads “Modification of any individual standard herein, for any other purposes, shall require advance written approval from the OLC.” Dr. Klein seconded the motion. Dr. Shuler made a motion to call the pending question with Mr. Edmondson seconding the motion. Mr. Edwards called for a roll-call vote on the motion to call the pending question. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion to call the pending question was approved. Mr. Edwards then called for a roll-call vote on the secondary motion. The vote was 15 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The secondary motion was approved. Finally, Mr. Edwards called for a roll-call vote on this

primary motion as appended by the secondary motion to amend the final amendments as presented by VDH. The vote was nine ayes (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and six nays (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, Mr. Kuhlman, and Dr. Miller). The motion was approved.

Mr. Beall moved that 12VAC5-412-100 C be restored in the final amendments so that the subsection remains as it is in the current regulations. Ms. Getter seconded the motion. Mr. Beall made the following comments as his rationale for this motion. This is the first of five VDH recommended amendments based on advice from the memoranda from the OAG. No one knows what the result of any legal challenge would be and that *Hellerstedt* is based on specific Texas law. Mr. Beall said that, should some of the facts change, a different judicial result might occur in Virginia. He said that the recommended amendment represented an unwarranted leap of faith not mandated by *Hellerstedt*, as the OAG's memo said that the regulatory provisions may be unconstitutional. He told the Board that amendments should not be adopted without following the APA. Mr. Beall stated that no abortion facilities in Virginia have closed as a result of the regulations currently in effect. Mr. Beall then asked Mr. Bodin how VDH's recommended amendment to Section 100 C would affect facility inspections. Mr. Bodin responded that there is still a requirement that the facility provide records that are requested during an inspection. Mr. Beall then asked if there is a time limit on when the records have to be provided. Mr. Bodin indicated that if the requested records are not provided before the end of the inspection, VDH would note that as a deficiency. Dr. Levine stated that the requirement in this subsection is more restrictive than for any other type of health care facility that VDH regulates.

Ms. Brosche requested further explanation concerning how the remaining requirements of Section 100 would be enforced by VDH during a facility inspection. Mr. Bodin said that when VDH staff enter a facility, staff in the facility are given a list of what VDH needs in order to conduct the survey. If the requested information is not provided, VDH would note a deficiency and then discuss whatever additional actions need to be taken. Ms. Getter asked that if VDH was not provided with the requested records, would VDH leave the facility without having received access to the records. Mr. Bodin said yes, but Dr. Levine explained to the Board that the Commissioner has statutory authority to obtain such records, and can obtain a warrant for such records as they would for any other health care facility that VDH regulates.

Ms. Prichard made a motion to call the pending question with Dr. Shuler seconding the motion. Mr. Edwards called for a roll-call vote on the motion to call the pending question. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion to call the pending question was approved. Mr. Edwards then called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 11 nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

After a brief break for the Board members to pick up their lunches, the Board continued the discussion on the final amendments to the Regulations for Licensure of Abortion Facilities.

Ms. Whipple made a motion to remove “32.1-132, 32.1-135.2 or 32.1-137.01” and insert “or 32.1-135.2” between the words “in violation of” and “of the Code of Virginia” in the second line of 12VAC5-412-130 A. She further moved to remove “32.1-132, 32.1-135.2 or 32.1-137.01” and insert “and 32.1-135.2” between the words “and compliance with” and “of the Code of Virginia” in the fifth line of 12VAC5-412-130 B. Ms. Prichard seconded the motion. Ms. Whipple told the Board that this removes Code sections that refer to the licensure of hospitals and nursing homes. Ms. Getter asked Ms. Bailey whether the abortion facilities needed to comply with the Code sections that are being removed. Ms. Bailey answered that these sections refer to the licensure of hospitals and nursing homes; abortion facilities fall under Virginia Code § 32.1-127.

Mr. Beall asked what effect this proposed amendment would have on VDH’s ability to suspend the license of Virginia Health Group. Dr. Levine responded that there would still remain other sections of the regulations, and in the Code of Virginia, that would provide VDH with authority to suspend the license given the conditions that were found upon the inspection of Virginia Health Group.

Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 10 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and five nays (Mr. Beall, Ms. Brosche, Ms. Getter, Ms. Hines, and Mr. Kuhlman). The motion was approved.

Ms. Whipple made a motion to add the sentence “Copies of personnel files shall not be removed from the premises” to the end of 12VAC5-412-180 H. Ms. Prichard seconded the motion. There was a discussion that the surveyors should have the opportunity to photocopy and remove copies of records if there are deficiency findings during an inspection. Mr. Bodin told the Board that in practice, surveyors take copies of documentation, properly redacted of patient identifying information, when an inspection is finished and that this is the practice for all types of facilities OLC inspects. Mr. Edwards asked if the motion was intended to affect originals or copies. Ms. Whipple made a motion to table the motion on the floor in order to clarify the wording of the motion. Ms. Hines seconded the motion. Mr. Edwards called for a vote by show of hands on the motion to table. The vote was 12 ayes (Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and three nays (Mr. Beall, Ms. Getter, and Mr. Kuhlman). The motion to table was approved.

Ms. Whipple made a motion to strike the first sentence of 12VAC5-412-190 C (that begins “A physician shall remain” and ends with “patient is discharged”). She also moved to strike the third sentence of 12VAC5-412-190 C (that begins “The physician shall give” and ends with “safe for discharge”). Finally, she noted that the word “adequate” in the fourth sentence of 12VAC5-412-190 C needs to be changed to “adequately.” Ms. Whipple stated that these two requirements provide no medical benefit. Mr. Edmondson seconded the motion. There was a discussion of whether it was good medical practice to have a physician stay until discharge and that the Board needs to consider what is needed for medical benefit and not cause an undue burden under *Hellerstedt*. It was also discussed that this is basic standard of care; that this

change was not recommended by VDH or the advisory panels that met to review the proposed amendments; and discharge orders have to be signed by a physician.

Mr. Beall made a secondary motion to retain the first line of the existing regulation of 12VAC5-412-190 C so that the first line remains “A physician shall remain on the premises until all patients are medically stable.” The rest of the sentence would be stricken for removal. Ms. Brosche seconded the motion. Mr. Edwards called for a roll-call vote on the secondary motion. The vote was 14 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, and Ms. Swartz) and one nay (Ms. Whipple). The secondary motion was approved.

There was further discussion of whether or not a discharge order is required in an abortion facility; whether an abortion facility has standing discharge orders or procedures; and whether the discharge orders are given to the patient by the physician or another health care provider. Ms. Hines made a motion to add the words “according to facility protocol or physician order” after the words “has been discharged” in the second sentence of 12VAC5-412-190 C which begins “Licensed health care practitioners trained.” Dr. Puritz seconded the motion. Dr. Levine said that the challenge the Board gets into is that it is trying to define standard of practice for doctors or nurses and the Board does not have the authority to define medical practice. She explained that as a facility regulator, the Board has to have standards of care that the facility follows. Mr. Edwards told the Board that the only standard of care that VDH defines is for emergency medical services personnel. Dr. Levine went on to say that the critical part is that the facility has policies and procedures in place and that the Board should use care of what is added or deleted from the regulations with that regard. After this discussion, Ms. Hines withdrew her motion.

Ms. Brosche made a secondary motion to delete the words “adequate trained” and insert the word “licensed” between the words “of the patient and that” and “health care practitioners” in the last sentence of 12VAC5-412-190 C that begins “The abortion facility shall develop.” Mr. Beall seconded the motion. Ms. Brosche stated that this would make this sentence consistent with the term “licensed health care practitioners” throughout this section of the regulation. There was a discussion of whether this change would necessitate an additional cost to staff. There was further discussion about what a licensed health care practitioner would do (such as assess) as compared to what could be done by an adequately trained health care professional (such as staying with a patient until discharge). Mr. Edwards called for a roll-call vote on the secondary motion. The vote was five ayes (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, and Mr. Kuhlman) and 10 nays (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The secondary motion failed.

There was a discussion about the need for discharge orders for a medication abortion as compared to a surgical abortion, and that a patient who does not receive a surgical procedure is as stable when they leave a facility as when they came in. Dr. Levine told the Board that while discharge procedures do not apply to a medication abortion per se, VDH would look at the policies and procedures in place at the facility. Mr. Edwards called for a roll-call vote on this primary motion as appended by the secondary motion to amend the final amendments as presented by VDH. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines,

Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion was approved.

Mr. Beall made a motion to restore the deleted language “, and which is consistent with the provisions of the current edition of “Guide to Infection Prevention in Outpatient Settings: Minimum Expectations for Safe Care,” published by the U.S. Centers for Disease Control and Prevention” in the first sentence of 12VAC5-412-220 A. Mr. Beall told the Board that not having this language would mean that each abortion facility would have different policies and procedures, and that facilities should have guidelines for infection prevention. He went on to say that removing this language was not included in the NOIRA; was not recommended by the advisory panels that reviewed the proposed amendments; and is outside *Hellerstedt*. Mr. Kuhlman seconded the motion.

There was a discussion that removing the reference to this specific guideline does not remove the requirement that facilities have infection control policies and procedures in place; that not having a specific reference is consistent with other facility regulations that VDH has; and that there may be other evidence-based guidelines that are better than the referenced guideline. It was also discussed that having the guideline reference is critical for ensuring infection control, and that removing the reference to the specific guidelines will not assist with infection control. There was also discussion concerning hospital accreditation, and how such accreditation is voluntary not mandatory. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 11 nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Getter made a motion to add a new subsection 4 in 12VAC5-412-220 C which would read: “Appropriate storage for clean/sterile supplies and medical equipment (e.g., dust-proof and moisture-free units) and instructions to prevent contamination (e.g., proper labeling, appropriate packaging, use of chemical and biological indicators).” She also moved to add the following sentence to subsection 7 “A workflow pattern shall be followed such that contaminated supplies clearly flow from contamination area to clean/sterile area” after the sentence ending “has been achieved” and before the sentence beginning “The procedure shall reference.” She told the Board that this wording is needed for infection control in light of the removal of the reference to CDC guidelines in 12VAC5-412-220 A. Ms. Brosche seconded the motion. There was a discussion of why items would move from a contaminated area to a clean/sterile area; that this wording refers to reusable items and is taken from CDC guidelines; and that clean/sterile areas are two different things depending on whether the item needs to be stored in a clean area or a sterile area. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was five ayes (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, and Mr. Kuhlman) and 10 nays (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Whipple made a motion to remove the words “as determined in compliance with § 18.2-76 of the Code of Virginia” that VDH recommended adding between the words “first trimester of

pregnancy” and “based on an appropriate” in 12VAC5-412-230 A. She further moved inserting the words “, meaning 13 weeks and 6 days after last menstrual period or based on an appropriate clinical estimate by a licensed health care provider” after the words “first trimester of pregnancy.” The sentence would now read: “Abortions performed in abortion facilities shall be performed only on patients who are within the first trimester of pregnancy, meaning 13 weeks and 6 days after last menstrual period or based on an appropriate clinical estimate by a licensed health care provider.” Ms. Prichard seconded the motion.

Dr. Puritz told the Board that from a medical point of view, the assumption that conception occurred two weeks after the last menstrual period can throw off calculations of the length of pregnancy and that in some instances, a clinical examination is needed to determine gestational age. Ms. Getter told the Board that, after much discussion at the September 2015 Board meeting, it had unanimously agreed to the wording as recommended by VDH in the final amendments. There was discussion about the requirement in § 18.2-76 of the Code of Virginia concerning an ultrasound being performed in order to determine gestational age and whether the citation to this specific Code section was required in the regulations. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion was approved.

Mr. Edmondson made a motion to take up from the table Ms. Whipple’s motion to amend 12VAC5-412-10 by deleting the definition of first trimester. Ms. Swartz seconded the motion. Mr. Edwards called for a vote by show of hands to take the motion up from the table. The vote was unanimous. Mr. Edwards then called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion was approved.

Ms. Hines made a motion to take up from the table Ms. Whipple’s motion to add the language “Copies of personnel files shall not be removed from the premises” to the end of 12VAC5-412-180 H. Mr. East seconded the motion. Mr. Edwards called for a voice vote to take the motion up from the table. The vote was unanimous. Ms. Whipple told the Board that she wanted to amend her motion by adding the words “unless redacted” to the start of the sentence. Mr. Edwards asked that the Board approve this addition by unanimous consent. Ms. Getter objected so the motion failed. Ms. Whipple made a secondary motion to add the words “unless redacted” to the start of the sentence in her primary motion. The sentence now reads “Unless redacted, copies of personnel files shall not be removed from the premises.” Ms. Prichard seconded. Mr. Edmondson made a motion to call the pending question with Dr. Shuler seconding the motion. Mr. Edwards called for a vote by show of hands for the motion to call the pending question. The vote was 14 ayes and no nays (Dr. Miller was not in the room for the vote). The motion to call the pending question was approved. Mr. Edwards then called for a roll-call vote on the secondary motion. The vote was 15 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The secondary motion was approved.

Ms. Getter told the Board that the wording that Ms. Whipple has made a motion to add is already contained in 12VAC5-412-100 B. Mr. Edwards said that reference in Ms. Whipple's motion was with regard to patients whereas the provision in subsection 100 B pertained specifically to personnel. Mr. Beall asked Mr. Bodin was current OLC practice is. Mr. Bodin answered that all records are redacted before copies are removed from the premises. Mr. Edwards then called for a roll-call vote on this primary motion as appended by the secondary motion to amend the final amendments as presented by VDH. The vote was 15 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion was approved.

Ms. Whipple made a motion to remove the words "which shall be notarized as required by § 16.1-241 of the Code of Virginia" in the first sentence of 12VAC5-412-230 B. Ms. Whipple explained that this language is duplicative. Dr. Shuler seconded the motion. There was a discussion that this language in the regulation alerts providers to the statutory requirement for notarization. Dr. Levine told the Board that removal of the language in the regulation does not change the requirement for notarization as required by this section of the Code of Virginia. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was nine ayes (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and six nays (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, Mr. Kuhlman, and Dr. Miller). The motion was approved.

Ms. Getter made a motion to restore the deleted language "and post-abortion counseling" between the words "family planning services" and "to its patients" in the last line of 12VAC5-412-230 E. She told the Board that this counseling is medically necessary and that abortion providers know what type of counseling is required. Mr. Beall seconded the motion. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was five ayes (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, and Mr. Kuhlman) and 10 nays (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Whipple made a motion to remove all of the current and proposed language to 12VAC5-412-240 C and replace it with "The abortion facility shall have policies and procedures for evaluation of all tissues removed during the abortion, and for reevaluation of the patient in the event the evaluation of tissue is insufficient to confirm termination of pregnancy." Mr. East seconded the motion. Ms. Brosche made a secondary motion to keep the last line in the section that reads "the facility shall track and log any specimens sent for further pathologic examination" as proposed by VDH. Ms. Getter seconded the motion. Mr. Edwards called for a roll-call vote on the secondary motion. The vote was 15 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The secondary motion was approved.

The section now reads: "The abortion facility shall have policies and procedures for evaluation of all tissues removed during the abortion, and for reevaluation of the patient in the event the evaluation of tissue is insufficient to confirm termination of pregnancy. The facility shall track and log any specimens sent for further pathologic examination." Mr. Edwards called for a roll-

call vote on this primary motion as appended by the secondary motion to amend the final amendments as presented by VDH. The vote was 13 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and two nays (Ms. Getter and Mr. Kuhlman). The motion was approved.

Mr. Beall made a motion to restore the wording “The abortion facility shall develop, implement, and maintain policies and procedures for screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention,” add the word “offering” between the words “policies and procedures for” and “screening of sexually transmitted,” and add the language “or at a minimum referring patients to clinics that provide such testing” to end the sentence to 12VAC5-412-240 A 3 in VDH’s final amendments. The sentence “the policies and procedures shall address appropriate responses to a positive screening test” remains stricken as recommended by VDH. The proposed language for 12VAC5-412-240 A 3 now reads:

The abortion facility shall develop, implement, and maintain policies and procedures for offering screening of sexually transmitted diseases consistent with current guidelines issued by the U.S. Centers for Disease Control and Prevention or at a minimum referring patients to clinics that provide such testing.

Mr. Beall told the Board that this wording represents good medical practice and is in accordance with CDC recommendations. Ms. Brosche seconded the motion. There was a discussion that provision of medical testing is already covered in 12VAC5-412-240 A 2, and that testing shall be based on an assessment of patient risk. There was also discussion that an inspection report of an abortion facility showed that a patient was not offered testing; and that this language is consistent with recommendations by the National Abortion Federation Clinical Policy Guidelines. Dr. Levine told the Board that the proposed language gives the impression that the Board is lowering the expectation for standard of practice. Mr. Beall said that he disagreed with Dr. Levine’s statement, and that STD testing is not routinely done as is other testing. Dr. Levine expressed to the Board her concern that the Board is trying to define standards of practice. There was further discussion that facilities are not in compliance with this section of the regulation. There was additional discussion that, if it is a facility’s policy not to offer testing and they are in fact not offering testing, then the facility would be adhering to its policy. Dr. Shuler made a motion to call the pending question with Mr. Edmonson seconding the motion. Mr. Edwards called for a roll-call vote for the motion to call the pending question. The vote was 15 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion to call the pending question was approved. Mr. Edwards then called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was eight ayes (Mr. Beall, Ms. Brosche, Ms. Getter, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, and Dr. Puritz) and seven nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion was approved.

Ms. Brosche made a motion to add the words “who is certified in advanced resuscitative techniques and has met the continuing education requirements” after the words “physician

licensed in Virginia” in 12VAC5-412-250 B. She told the Board that this language adds clarity and ensures that providers are following safe anesthesia procedures. Mr. Beall seconded the motion. There was a discussion that this language oversteps the requirements of the Board of Medicine; what the requirements and cost are for becoming certified; and whether this would limit the number of physicians in abortion facilities. Ms. Bailey commented that the language needs to be clear so that physicians are not held to two different standards from this regulation and Board of Medicine regulations. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 14 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Shuler, Ms. Swartz, Dr. Puritz, and Ms. Whipple) and one nay (Dr. Klein). The motion was approved.

Ms. Whipple made a motion to delete the words “drugs shall include, at a minimum, those to treat the following conditions: 1. Cardiopulmonary arrest; 2. Seizure; 3. Respiratory distress; 4. Allergic reaction; 5. Narcotic toxicity; 6. Hypovolemic shock; and 7. Vasovagal shock” in 12VAC5-412-280. Ms. Whipple stated that the reason for the removal is that this list of drugs is not needed for an abortion procedure. Mr. Edmondson seconded the motion. There was a discussion of what medications should be available; that the first two sentences of this section of the regulation state the requirement for having appropriate drugs available; and the appropriate standard of care. There was also discussion that there have been problems in facilities with expired drugs and not having appropriate crash carts; and this list provides guidance to the facilities. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 12 ayes (Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Shuler, Ms. Swartz, Dr. Puritz, and Ms. Whipple) and three nays (Mr. Beall, Ms. Getter, and Mr. Kuhlman). The motion was approved.

Ms. Brosche made a motion to restore all of the stricken language in the first two sentences of 12VAC5-412-290 C. She further moved to add the language “or electronic” after the word “written” and before the word “agreement” in the first sentence of this subsection. She further moved to add the words “if office-based anesthesia is administered as per 18VAC5-20-370” after the words “general hospital” and before the words “to ensure that” in the first sentence of this subsection. The entire subsection now reads:

A written or electronic agreement shall be executed with a licensed general hospital, if office-based anesthesia is administered as per 18VAC85-20-370, to ensure that any patient of the abortion facility shall receive needed emergency treatment. The agreement shall be with a licensed general hospital capable of providing full surgical, anesthesia, clinical laboratory, and diagnostic radiology service on 30 minutes notice and which has a physician in the hospital and available for emergency service at all times.

Mr. Kuhlman seconded the motion. Ms. Brosche told the Board that if this language is removed as recommended by VDH, she is concerned that a transfer agreement will not be in place. There was a discussion that this requirement is the same as required by the Board of Medicine; that hospitals under federal law must treat a patient in an emergency situation; concerning the

difference between EMTALA “anti-dumping” requirements and transferring a patient to the best facility for the emergency condition; and that this deals with the standard of care. Ms. Brosche made a secondary motion to remove all language after the words “as per 18VAC85-20-370” so that the first sentence now reads “A written or electronic agreement shall be executed with a licensed general hospital, if office-based anesthesia is administered as per 18VAC85-20-370.” Mr. Beall seconded the motion. Mr. Edwards called for a roll-call vote on the secondary motion. The vote was 13 ayes (Mr. Beall, Ms. Brosche, Mr. Edmondson, Mr. Edwards, Ms. Getter, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Dr. Puritz, Ms. Swartz, and Ms. Whipple) and three nays (Mr. East, Ms. Prichard, and Dr. Shuler). The secondary motion was approved. There was a discussion that the section cited is a Board of Medicine regulation and that if that regulation were to change, the citation could change, thus necessitating a revision to 12VAC5-412. Dr. Levine told the Board that if the regulation wording changed but the citation did not change, a revision to 12VAC5-412 would not be necessary. Mr. Edwards called for a roll-call vote on this primary motion as appended by the secondary motion to amend the final amendments as presented by VDH. The vote was five ayes (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, and Mr. Kuhlman) and 10 nays (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Whipple made a motion to add the words “if medically indicated,” to the beginning of the last sentence of 12VAC5-412-300, which currently begins “It shall include.” The sentence now reads: “If medically indicated, it shall include, but not be limited to the following.” Ms. Whipple told the Board that this wording is added for clarity, only for those facilities where needed. Ms. Prichard seconded the motion. Mr. Beall commented that this is adding a new requirement to the final amendments and is outside the scope of the NOIRA. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was eight ayes (Mr. East, Mr. Edmondson, Ms. Hines, Dr. Klein, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and seven nays (Mr. Beall, Ms. Brosche, Mr. Edwards, Ms. Getter, Mr. Kuhlman, Dr. Miller, and Ms. Prichard). The motion was approved.

Ms. Getter made a motion to replace the words “any serious injury to a patient” with the words “complications including but not limited to continuing pregnancy, bleeding, infection, perforation, damage to organs or anesthesia complication” in 12VAC5-412-320 B 2. Ms. Getter told the Board that only one incident has been reported to VDH by a facility pursuant to this section. Ms. Brosche seconded the motion. There was a discussion about bleeding and changing the wording to be more specific; and that this language represents micromanagement of the facility. It was also discussed that, although the complication rate is low, it appears that there are no complications based on current inspection reports. Dr. Klein made a motion to call the pending question and Ms. Prichard seconded the motion. Mr. Edwards called for a vote by show of hands for the motion to call the pending question. The vote was 14 ayes (Mr. Beall, Ms. Brosche, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and one nay (Ms. Getter). The motion to call the pending question was approved. Mr. Edwards then called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was three ayes (Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 12 nays (Mr. Beall, Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Ms. Whipple made a motion to delete 12VAC5-412-320 B 5 in its entirety. This subsection deals with requiring facilities to report incidents to OLC that have been reported to a malpractice insurance carrier. She told the Board that such reporting can be an act to intimidate a provider; that some reports are done as a nuisance or to cause mischief; and that this subsection is not needed. Dr. Puritz seconded the motion. There was a discussion that incidents of this nature had not occurred and that removal of this section would keep this type of reporting from happening. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 10 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and five nays (Mr. Beall, Ms. Brosche, Ms. Getter, Ms. Hines, and Mr. Kuhlman). The motion was approved.

Ms. Whipple made a motion to remove 12VAC5-412-330 1 and 12VAC5-412-330 3 in their entirety. The last sentence of 12VAC5-412-330 would now read “The policies and procedures shall include, but not be limited to safety rules and practices pertaining to personnel, equipment, gases, liquids, drugs, supplies, and services.” She told the Board that removal of this language pertaining to abortion facility security and disseminating safety related information is to prevent this material from getting into the hands of someone trying to compromise security. Mr. Edmondson seconded the motion. There was a discussion of whether removal of this information would conflict with OSHA guidelines; of whether the procedures would be verbal rather than written; and that the Code of Virginia requires regulatory provisions concerning abortion facility security. It was also discussed that the language in 12VAC5-412-330 already requires the facility to have policies and procedures and that the Board cannot prescribe a set of security regulations. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The motion was approved.

Ms. Whipple made a motion to remove 12VAC5-412-340 in its entirety. This section of the regulation deals with disaster preparedness. She told the Board that this section is not medically necessary and is an undue burden. Mr. Edmondson seconded the motion. Ms. Bailey advised the Board that § 32.-127 B of the Code of Virginia requires the Board to develop minimum standards and that this proposed wording would need re-working. Ms. Whipple then told the Board that she would like to withdraw her motion. Hearing no objection, the motion was withdrawn by unanimous consent.

Ms. Getter then asked a question concerning the recommended amendments to 12VAC5-370 and how the amendments fit with the provisions of § 32.1-127 of the Code of Virginia that require minimum standards for construction and maintenance. Ms. Bailey responded that the minimum standard is that the abortion facility has to comply with provisions of the Uniform Statewide Building Code. Ms. Getter asked if the Board has a minimum standard in this regard. Ms. Bailey said that, according to the *Hellerstedt* decision, the Board can choose to require that abortion facilities comply with the building code. Ms. Getter then made reference to provisions in the Guidelines for Design and Construction of Hospitals and Outpatient Facilities, published by the Facilities Guidelines Institute (FGI guidelines). Dr. Levine explained that, under the recommended amendments to Section 370, there is nothing to prevent an architect from using the

FGI guidelines. However, VDH does not recommend mandating a specific guideline, as that is not the standard for any other outpatient health facility.

Ms. Getter made a motion to add the language “and shall be designed and constructed pursuant to § 32.1-127 B 1 of the Code of Virginia” after the word “ordinances” in the first sentence of 12VAC5-412-370. The sentence would read: All construction of new buildings and additions or major renovations to existing buildings for occupancy as an abortion facility shall comply with all applicable state and local codes and ordinances and shall be designed and constructed pursuant to § 32.1-127 B 1.” Mr. Beall seconded the motion. Ms. Whipple requested that Code section be read to the Board. There was a discussion that some parts of the section conflict with *Hellerstedt* and some parts do not. In response to a question, Mr. Clements told the Board that local building officials do not enforce FGI guidelines.

Dr. Klein made a motion to call the pending question with Mr. Edmondson seconding the motion. Mr. Edwards called for a vote by hand for the motion to call the pending question. The vote was 12 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Mr. Kuhlman, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple) and three nays (Mr. Beall, Ms. Brosche, and Ms. Getter). The motion to call the pending question was approved. Mr. Edwards called for a roll-call vote on this motion to amend the final amendments as presented by VDH. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman) and 11 nays (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple). The motion failed.

Dr. Miller made a motion to call the pending question on the main motion before the Board with Ms. Prichard seconding the motion. Mr. Edwards called for a vote by show of hands for the motion to call the pending question. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), two nays (Ms. Getter and Mr. Kuhlman), and 2 abstentions (Mr. Beall and Ms. Brosche). The motion to call the pending question was approved. There being no further discussion, Mr. Edwards then called for a vote on the main motion to approve the final amendments as presented by VDH, and as amended during the foregoing discussions. The vote was 11 ayes (Mr. East, Mr. Edmondson, Mr. Edwards, Ms. Hines, Dr. Klein, Dr. Miller, Ms. Prichard, Dr. Shuler, and Ms. Whipple) and four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman). The final amendments were approved.

Adjourn

The meeting adjourned at approximately 5:18 p.m.