

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

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Thursday, June 23, 2011

Department of Health Professions

Richmond, VA

**PUBLIC COMMENT**

Dr. Ransone began the morning by calling to order a public meeting for the purpose of taking comment on the Board of Medicine's proposed regulations, "Disclosure Requirements for Licensed Midwives". As there was no comment, Dr. Ransone thanked all in attendance and closed the meeting at 8:50 a.m.

**CALL TO ORDER:** Dr. Ransone then called the meeting of the Full Board to order.

**ROLL CALL:**

**MEMBERS PRESENT:** Karen Ransone, MD, President  
Claudette Dalton, MD, Vice-President  
Stuart Mackler, MD, Secretary/Treasurer  
Deeni Bassam, MD  
Randy Clements, DPM  
William Epstein, MD  
Stephen Heretick, JD  
Valerie Hoffman, DC  
Gopinath Jadhav, MD  
Jennifer Lee, MD  
Jane Maddux  
Juan Montero, MD  
Jane Piness, MD  
Wayne Reynolds, DO  
Michael Signer, PhD., JD

**MEMBERS ABSENT:** Sandra Bell, MD  
Roderick Mathews, JD

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Barbara Matusiak, MD, Medical Review Coordinator  
Ola Powers, Deputy Executive Director, Licensing  
Colanthia Morton Opher, Operations Manager  
Amy Marschean, Senior Assistant Attorney General

Dianne Reynolds-Cane, MD, DHP Director  
Arne Owens, DHP, Chief Deputy Director

**OTHERS PRESENT:** Becky-Bowers Lanier, Commonwealth Midwives Alliance  
W. Scott Johnson, Esq., HDJN  
Samantha Sollar, HDJN  
Robin Cummings, MSV

## **EMERGENCY EGRESS PROCEDURES**

Dr. Ransone read the emergency egress procedures for Conference Room 2.

## **APPROVAL OF THE FEBRUARY 17, 2011 MINUTES**

Dr. Montero moved to accept the minutes of February 17, 2011. The motion was seconded and carried unanimously.

## **ADOPTION OF AGENDA**

Dr. Montero moved to adopt the agenda as amended by Dr. Harp. The motion was seconded and carried unanimously.

## **PUBLIC COMMENT ON AGENDA ITEMS**

There was no public comment.

## **NEW BUSINESS**

## **DHP DIRECTOR'S REPORT**

Dr. Reynolds-Cane highlighted the major accomplishments of DHP over the last year. Dr. Reynolds-Cane thanked the Board for their enthusiasm and commitment to protecting the public.

## **REPORT OF OFFICERS AND EXECUTIVE DIRECTOR**

## **PRESIDENT'S REPORT**

Dr. Ransone reported that she, Mr. Heretick and Dr. Harp attended the Federation of State Medical Board's Annual Meeting in Seattle, WA. She noted that the main themes of the meeting were workforce issues and maintenance of licensure.

## **VICE-PRESIDENT'S REPORT**

Dr. Dalton related her decision to withdraw her name from candidacy this year for a seat on the Federation's Board of Directors. She thanked everyone for their support and stated that she may run again in the future.

## **SECRETARY-TREASURER'S REPORT**

There was no report.

## **EXECUTIVE DIRECTOR'S REPORT**

- MD Vacancy--6th Congressional District

Dr. Harp informed the Board that the seat formerly occupied by William Mann, MD remains vacant.

- Revenue and Expenditures Report

Dr. Harp advised that the Board is currently operating well within the budget. The cash balance as of April 30, 2011 was \$5,587,689.

- Budget for 2012-2014

Dr. Harp briefly spoke to the proposed biennial budget for FY2012-FY2014, which uses the expenditures for FY2010 as its base. He reported that some dollars were moved from sub object code to sub object code to address staffing and legal matters, but the adjustments did not affect the total base number from FY2010.

- Dr. Reynolds-Cane's Letter Regarding Board of Medicine Licensing Fees

Dr. Harp referred to the financial memorandum sent from Dr. Reynolds-Cane recommending that no change in Medicine's licensing fees be made at this time. However, it was noted that long-term projections indicate the Board may experience a \$2.4 million shortfall by June 30, 2016. Fee increases may be required during FY2013 to ensure enough revenue to continue to meet the financial responsibilities of regulating the Board's licensees.

- Key Performance Measures

Dr. Harp provided an update on the Board's Key Performance Measures. He complimented Dr. Matusiak, Ms. Powers and Ms. Deschenes on the great job they do to ensure that the Board meets or exceeds the expectations of the Administration. The percent of patient care cases closed in 250 days or less is 95%. The customer satisfaction rate of new applicants is 95.6%.

- HPMP Statistics

This report was provided for informational purposes only. No action was required. There are currently 123 Board of Medicine licensees in HPMP.

- Midwifery Workgroup Update

Dr. Harp summarized the letter received from Dr. Bader and Ms. Potter. He said that Dr. Bader and Ms. Potter have carried the ball on the research for the workgroup and have shared the data at its meetings.

Dr. Ransone informed the Board that there have been three meetings of the workgroup. She stated the concern remains that there is no precedent at the Board of Medicine for a licensee, other than a prescriber, to carry and administer medications without supervision. There is also concern that there may be a delay in seeking needed medical care if midwives have access to certain medications. Dr. Ransone noted that on another issue, as much as the workgroup tried, they were unable to come to an agreement regarding patient selection. Dr. Ransone reminded the Board that when midwives were seeking licensure, they agreed to licensure without medication.

Dr. Harp asked the Board to consider two actions items: 1) that Board and DHP staff be directed to draft model statutory language which would outline a mechanism for obtaining, carrying and administering medication that does not include physician supervision or 2) table the issue.

After a brief discussion, Dr. Montero moved that the issue be tabled indefinitely. The motion was seconded and carried.

Dr. Harp suggested that after a hiatus of a couple of months the midwifery group may want to revive this issue. Dr. Jadhav noted that tabling the issue does not mean that the Board intends to dismantle all the hard work that has been done on this issue.

- Petition for Rule-Making Regarding Part 4 of the NBCE

Dr. Harp reviewed the petition for rule-making submitted by Dr. Kenneth Knox in which he asks the Board to consider amending the regulations to allow a chiropractor who has been actively practicing in another state for five years or more to be granted licensure even though he/she may have only passed Parts I, II, and II, and not passed Part IV.

Dr. Hoffman stated that our current regulations requiring the passing of all four parts of the NBCE are adequate as is and should not be changed.

The comment period for this petition is open until July 20, 2011; the petition and all comment will be presented to the Executive Committee at its August 5<sup>th</sup> meeting.

- Joint Commission on Health Care Letter Regarding Lyme Disease

Dr. Harp acknowledged the Joint Commission on Health Care's request that the Board provide JCHC notification of any plans to consider promulgating regulations or to initiate action related to prescribing antibiotics over an extended time period to treat Lyme Disease, Chronic Lyme Disease, or post-Lyme Syndrome. Dr. Harp stated that notification of regulatory activity, informal conferences and summary suspensions meeting these criteria will be provided as permitted by law.

Dr. Cane advised that the Task Force's final meeting is June 30, 2011; recommendations will be forwarded to the Governor.

#### HHS Letter Regarding Reporting of Actions

Dr. Harp acknowledged correspondence from the Department of Health and Human Services, Division of Practitioner Data Banks commending the efforts of everyone involved in bringing DHP's reporting into line and achieving "compliant" status.

#### Prescription Monitoring Program Statistics

Dr. Harp noted a increased number of registered prescribers and increased usage; requests are up by 50%. The Board sends kudos to Ralph Orr for the fine work he is doing at PMP.

Dr. Bassam noted that although there is success in the PMP, it has not made a difference in the opioid deaths across the state. He said that education may be what is needed to reduce mortality.

#### Report on the Federation of State Medical Boards' Foundation

Mr. Heretick, VP for the Foundation, advised that the Foundation is a non-profit organization set up to support education and research projects. The Foundation is comprised of eight members that meet 4 times a year. Mr. Heretick spoke briefly about its current projects, and encouraged anyone interested in serving to consider one of the three seats coming available this summer.

#### Letter from Lisa Robin

Dr. Harp drew the Board's attention to a letter from Lisa Robin at FSMB thanking Virginia and North Carolina for the continued support in the updating of the prescribing opioids guide. Ms. Robin has asked the Board to send a letter of support for FSMB's plan to make the book available to as many physicians as possible.

Mr. Heretick advised that Scott Fishman, MD, author of the Federation's book, has renounced all royalties from the book.

Dr. Dalton moved that a letter of support be sent to the FSMB encouraging their efforts. The motion was seconded and carried.

#### Dr. Reynolds on the Federation of State Medical Boards Audit Committee

Dr. Harp informed the Board that Dr. Reynolds has been appointed to this Committee and expressed his gratitude to Dr. Reynolds for his willingness to serve in this capacity.

#### Senate Bill 1444 Regarding the Department of Motor Vehicles and Physician Assistants

Dr. Harp advised that as of July 1, 2011, DMV will be allowed to accept the assessment of a physician assistant in its process for determining the safety of a driver.

#### American Board of Pain Medicine Letter Regarding A New Examination

Dr. Harp advised that the intent of this letter was to inform the Board of a new examination intended for primary care physicians and licensed health care practitioners who have prescriptive authority for dispensing opioid analgesics. This exam tests the knowledge of the generalist and results in a certificate for successful completion. When launched, this could be a resource for the Board in its disciplinary process.

Dr. Dalton pointed out that this is not an ABMS board.

#### Richmond Academy of Medicine Article

Dr. Harp mentioned a recent interview with RAM and that the article was currently being prepared for the August newsletter.

#### Three Paid Claims

Dr. Harp informed the Board that since legislation was passed in the 2011 Session of the General assembly increasing the threshold to \$75,000 on July 1, 2011; several requests have been received asking to be exempt from the current requirements.

#### Committee and Advisory Board Reports

Ms. Deschenes identified a correction to the April 1, 2011 Executive Committee minutes and to the May 24, 2011 Ad Hoc on Continuing Competency. The corrections were acknowledged, after which the Board accepted the minutes and reports en bloc.

#### **Other Reports**

##### Assistant Attorney General

Ms. Marschean gave an update on the activity in lawsuits in which the Board is involved.

##### Board of Health Professions

Dr. Harp referred to the report from BHP that recommends Genetic Counselors be regulated by the Board of Medicine and that an advisory board be established.

### Podiatry Report

No report.

### Chiropractic Report

No report.

### **Regulatory and Legislative Issues**

Ms. Yeatts reviewed her chart showing the status of regulatory activity of the Board. This was provided for information only.

### Periodic Review of Chapter 20: Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic

Dr. Mackler moved to adopt the recommended amendments to Chapter 20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic pursuant to a periodic review. The motion was seconded and carried.

### Response to Petition for Rulemaking

Wilhelm Zuelzer, MD petitioned the Board “to allow 2 years in an ACGME accredited residency or fellowship to meet the educational requirements for graduates or former students of institutions not approved by an accrediting agency approved by the Board.”

After some discussion the Board agreed that the current regulations already allow for a fellowship to be accepted within certain parameters and directed board staff to accept two years of ACGME accredited post graduate training, be it residency or fellowship.

Dr. Montero moved that this clarification on the interpretation of the current regulations be relayed to Dr. Zuelzer. The motion was seconded and carried.

### Recommendation for Legislative Proposal

Ms. Yeatts advised that this proposal is identical to the “clean-up” legislation recommended to the Governor for the 2011 Session which was not picked up. This version omits the corrections for osteopathic medicine and does not include the change in terminology to podiatric medicine from podiatry. Ms. Yeatts stated that this is strictly housekeeping to clean up language in several sections and should not meet with objection.

Dr. Piness moved to accept the recommendation. The motion was seconded and carried.

### Federation of State Medical Boards’ Pilot Program in Continuing Competency

Dr. Dalton reviewed the minutes of the last meeting of the Ad Hoc Committee on Competency.

She informed the Board that she will be chairing FSMB's MOL non-clinical committee to develop recommendations for a non-clinical practitioner to be able to meet the proposed FSMB MOL requirements in a reasonable way, utilizing current activities/reviews when possible. Dr. Dalton also advised that MSV has been asked to consider placing links on its website to enhanced CME activities.

Dr. Harp said he had just participated in an FSMB MOL conference call that included stakeholder organizations with the tools for competency assessment (NBME, AOA, ABMS) as well as the other states interested in being part of the FSMB pilot. He said that the MOL pilot may well have states handling different parts of the MOL sequence to get as much data as possible in a brief period of time.

### Licensing Report

Ms. Powers provided an update on the development of the online licensure applications for MD's, OT's, and RCP's.

Ms. Powers highlighted the licensure numbers for the Third Quarter of FY2011 which ended in March 2011. She then asked the Board to consider amending the time frame for auditing of CME credits to every four years from the current two years. Ms. Powers noted that this change would economize staff effort and allow for the application of resources to other licensing activities.

Dr. Harp asked that consideration be given to putting into the law the requirement to report CME hours on the physician profile system. This requirement would be convenient for licensees, serve the public well and allow the Board to do a 100% audit of CME.

Ms. Yeatts advised that since the current law is related to a practitioner's competency, this requirement could be added through regulation.

### Discipline Report

Ms. Deschenes advised that from June 1, 2010 to June 1, 2011 the disciplinary numbers were as follows:

80 informal conferences  
19 formal hearings  
14 summary suspensions  
69 consent orders negotiated  
17 confidential consent agreements entered  
And 174 advisory letters issued

Ms. Deschenes encouraged Board members to inform Discipline staff as soon as possible when they become unable to serve on days to which they had previously agreed.

Ms. Deschenes noted that approximately 20% of cases at IFC's have been dismissed (19/80).



She reminded both Board members and staff of the need to be as discerning as possible when deciding to send a case forward for proceedings.

Bassam said that rather than give too much weight to a blip in stats, he believes the deliberate process of the Board stands it in good stead, protecting the public while providing due process.

Ms. Deschenes indicated that Virginia was #21 on Public Citizens' ranking of the boards of medicine. It was noted that actions taken by boards of medicine across the nation were down this past year.

### **Credentials Committee Recommendation**

The Board was provided with the Credentials Committee's recommendation in the matter heard on June 22, 2011.

On a motion made by Mr. Heretick and duly seconded, the Board voted unanimously to accept the Recommendation of the Credentials Committee.

### **2012 Proposed meeting dates**

The proposed calendar was reviewed and accepted as presented.

### **Farewells**

Board members and Board staff expressed their appreciation of Dr. Bell, Dr. Montero, Mr. Mathews, and Mr. Heretick, all of whom were departing the Board after two four-year terms. Dr. Ransone presented service plaques to Dr. Montero and Mr. Heretick.

### **Nominating Committee**

Mr. Heretick informed the Board that the Nominating Committee met with each of the candidates interested in serving as President, Vice-President and Secretary-Treasurer. After discussion, the Nominating Committee was deadlocked and proposed that the offices be filled by a ballot of the Board.

Those members interested in serving as an officer addressed the Board in open forum. After the ballots were counted, those elected were:

Claudette Dalton, MD, President  
Valerie Hoffman, DC, Vice-President  
Stuart Mackler, MD, Secretary-Treasurer

### **Announcements**

Staff reminded the Board of their hearing assignments for the remainder of the day.

**Adjournment:** With no other business to conduct, the meeting adjourned at 12:05 p.m.

**Next scheduled meeting:** October 20-22, 2011

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Claudette Dalton, M.D.  
President, Chair

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William L. Harp, M.D.  
Executive Director

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Colanthia M. Opher  
Recording Secretary