

**VIRGINIA BOARD OF MEDICINE
FULL BOARD MINUTES**

June 18, 2015

Department of Health Professions

Henrico, VA

CALL TO ORDER: Dr. Reynolds called the meeting of the Board to order at 8:36 A.M.

ROLL CALL: Ms. Opher called the roll. A quorum was established.

MEMBERS PRESENT: Wayne Reynolds, DO, President
Kenneth Walker, MD, Vice-President
Barbara Allison-Bryan, MD, Secretary-Treasurer
Syed Ali, MD
Randy Clements, DPM
Lori Conklin, MD
Irina Farquhar, PhD
David Giammittorio, MD
The Honorable Jasmine Gore
Lorri Kleine, JD
Maxine Lee, MD
Stuart Mackler, MD
Kevin O'Connor, MD
Ray Tuck, DC

MEMBERS ABSENT: Kamlesh Dave, MD
Siobhan Dunnavant, MD
Deborah DeMoss Fonseca
Frazier Frantz, MD

STAFF PRESENT: William L. Harp, MD, Executive Director
Jennifer Deschenes, JD, Deputy Executive Director, Discipline
Barbara Matusiak, MD, Medical Review Coordinator
Alan Heaberlin, Deputy Executive Director, Licensing
Colanthia Morton Opher, Operations Manager
Lynn Taylor, Discipline Support Specialist
David Brown, DC, DHP Director
Elaine Yeatts, DHP Senior Policy Analyst
Erin Barrett, JD, Assistant Attorney General

OTHERS PRESENT: Portia Tomlinson, Advisory Board on Physician Assistants
Bea Gonzalez, VPMA
Tyler Cox, MSV
Mike Jurgensen, MSV
Richard Grossman, Vectre Corporation

OTHERS PRESENT: (cont.): Hunter Jamerson, Macaulay & Burtch, PC

ACKNOWLEDGEMENT OF GUESTS

Dr. Reynolds asked each of the audience to introduce themselves to the Board.

EMERGENCY EGRESS PROCEDURES

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

APPROVAL OF THE FEBRUARY 19, 2015 MINUTES

Dr. Mackler moved to approve the minutes from the Board meeting of February 19, 2015. The motion was seconded by Dr. Ali and carried unanimously.

APPROVAL OF THE AGENDA

Dr. Conklin moved to approve the agenda as presented. The motion was seconded by Dr. Mackler and carried unanimously.

PUBLIC COMMENT ON AGENDA ITEMS

Portia Tomlinson, PA and Vice-Chair of the Advisory Board on Physician Assistants, addressed the Board regarding its concern with the fast-track proposal for the elimination of the physician's signature on prescriptions written by a physician assistant. Ms. Tomlinson said that the elimination of this requirement would align their profession with the nurse practitioners and that retaining the requirement may create a barrier to effective practice. Ms. Tomlinson noted that oftentimes electronic prescription programs are not set up to accept the name of the supervising physician on the prescription. Ms. Tomlinson offered to answer any questions that the Board might have during its discussion of this issue.

The floor closed at 8:50 a.m.

NEW BUSINESS

DHP DIRECTOR'S REPORT

Dr. Brown requested that the Board save the date of the September 28, 2015 for a Board member training day. Dr. Brown stated that the agency is emphasizing training on all levels, and thinks that the Board member training will assist individuals in becoming the best Board member they can be. He noted that additional information will be forthcoming.

Dr. Brown also gave an updated progress report on the Governor's Task Force on Prescription Drug and Heroin Abuse. He advised that final recommendations will be presented to the Governor along with a plan for implementation. Among the suggestions is the development of a website, funded by the Board of Medicine, to be used by the public, prescribers and law enforcement alike. DHP will be overseeing and coordinating this project along with the Department of Behavioral Health and Developmental Services, Department of Health, and Department of Criminal Justice.

Dr. Brown also stated that an ever-present issue is whether the Board should have mandated continuing education for its licensees. He suggested that consideration should be given to the option of requiring CME on a particular topic each renewal cycle.

Dr. Brown closed by advising that after a discussion about the possible lack of oversight of pharmacy benefit managers by the Board of Pharmacy, DHP will be establishing a workgroup to review the issue, look at current operations, and determine if there are any gaps in the regulatory process. He anticipates that the group will be comprised of a representative from the Board of Pharmacy, Board of Medicine, Virginia Pharmacist Association, Medical Society of Virginia, Virginia Department of Health, and a few other governing bodies.

With respect to the Revenue, Expenditures, and Cash Balance Analysis, Ms. Yeatts stated that, based on the Board's cash balance at the end of 2014, the Board may want to consider a one-time renewal fee decrease for the 2016 and 2017 at its October Board meeting.

REPORT OF OFFICERS AND EXECUTIVE DIRECTOR

PRESIDENT'S REPORT

Dr. Reynolds stated that this has been a fantastic year as President and thanked the Board for their confidence in his leadership. He advised that he had attended FSMB's Annual Meeting and that Claudette Dalton, MD and Steve Heretick, JD both won their races for the FSMB Board of Directors.

Reports by Attendees to the FSMB Annual Meeting

Dr. Walker shared information about surrounding states and their progress on joining up with other PMP's, CPEP in Raleigh, and the Interstate Medical Licensure Compact.

Dr. Mackler shared information regarding a panel discussion on opioid use and misuse and informed the Board that he will be serving on a committee to revamp and improve individual state medical board websites.

Mr. Heaberlin shared information regarding North Carolina's website which hosts a helpful video on the limitations their board has in regards to complaints, a website tool (Google Analytics) that helps identify web traffic, and FSMB's serving as a repository for the records of closed medical schools and residency programs.

Dr. Brown added that he was pleased to see such good Virginia attendance at the FSMB Annual Meeting and hopes to see even more in the future. He stated that the fact that Virginia's presence could have an impact on the national level in the development of projects such as the Interstate Compact is exciting, and he appreciates the Board members and staff attending the meeting.

Dr. Reynolds noted that Virginia's increased visibility at FSMB was a testament to Dr. Brown's support and funding.

VICE-PRESIDENT'S REPORT

No report.

SECRETARY-TREASURER'S REPORT

No report.

EXECUTIVE DIRECTOR'S REPORT

- Revenue and Expenditures Report

Dr. Harp advised that the most recent report indicates that the Board is well within budget and will be considering another 14% reduction for 2016-2017 renewal fees.

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

- Health Practitioners' Monitoring Program Statistics

Dr. Harp stated that MD's remain the majority of Board of Medicine participants in HPMP. In answer to a question about whether a participant may continue to practice, Dr. Harp related that the program has the ability to remove a licensee from practice upon entry into the program, during which time it can be determined if the participant is safe to resume patient care.

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

- Recognition of members with terms expiring

Dr. Reynolds acknowledged and presented service plaques to Ms. Kleine and Dr. Farquhar for their service on the Board.

Ms. Kleine said that she was impressed with the work of the Board and has enjoyed serving.

Dr. Farquhar said that she was immensely honored to have been given the opportunity to serve and has learned a lot.

Dr. Dave and Dr. Frantz will be provided their plaques at a later time.

American Board of Surgical Assistants (ABSA) Recommendation from the Legislative Committee

Dr. Harp referred the members to page 26 of the agenda packet where the recommendation of the Legislative Committee reads, “After discussion, Dr. Tuck moved to recommend that the Board take no action. The motion was seconded and carried by majority, with Dr. Ali opposing and Dr. Lee abstaining.” Dr. Harp said that the committee members read the 38 comments received during the public comment period, most of which supported the inclusion of the ABSA in statute, and also heard from the CEO of ABSA. After consideration, the Committee voted to recommend to the Board that no action be taken.

Ms. Barrett informed the Board that in 2014 the General Assembly passed a law that allows the Board of Medicine to register surgical assistants and surgical technologists. In that law, two credentialing bodies were included, but a third (ABSA), for whatever reason, was excluded. She noted that the Board does not have the jurisdiction to amend the regulations.

Dr. Allison-Bryan moved to accept the recommendation of the Legislative Committee. Dr. Walker seconded the motion and it carried unanimously.

COMMITTEE AND ADVISORY BOARD REPORTS

- Committee Appointments and Advisory Board Reports

With the acceptance of an amendment to the MDR minutes’ attendee list, Dr. Mackler moved to approve the Committee appointments and minutes en bloc. Dr. O’Connor seconded the motion and it carried unanimously.

OTHER REPORTS

- Assistant Attorney General

Ms. Barrett provided an update on two lawsuits. She pointed out that sometimes cases generate media attention and reminded the members to refer inquiries to Board staff. In addition, Ms. Barrett reminded everyone of what is subject to FOIA.

Board of Health Professions

Dr. Brown stated that Dr. Frantz is doing a great job representing the Board of Medicine. He noted that BHP is currently assessing issues with dental hygienists and remote supervision and other strategies to increase access to healthcare. There is also discussion of providing a licensing for funeral directing that does not require the holder to also be an embalmer.

Podiatry Report

Dr. Clements had no report.

Chiropractic Report

Dr. Tuck reported that he recently attended the Federation of Chiropractic Licensing Boards and learned that Virginia is one of the few states in which chiropractors are licensed by a board of medicine. He stated that there was a lot of discussion on telemedicine. Dr. Tuck thanked Dr. Brown for his support in attending this conference.

Committee of the Joint Boards of Nursing and Medicine

No additional reporting items.

Dr. O'Connor reported that he had attended a CTel meeting at which Jay Douglas, Executive Director for the Board of Nursing, did a great job as a panel member. He stated that although the work has been done on the telemedicine guidance document, nurse practitioners should be included.

Ms. Deschenes stated that the document applies to all the professions licensed by the Board of Medicine, including nurse practitioners.

REGULATORY AND LEGISLATIVE ISSUES

- Chart of Regulatory Actions

Ms. Yeatts provided an update on the status of the Board's pending regulations.

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

- Adoption of amended regulations governing Surgical Assistants and Surgical Technologists

Ms. Yeatts advised that "or" was mistakenly added to 18VAC85-160-50(C)(1) and the amendment will conform the regulations to the Code of Virginia.

Dr. Mackler moved to accept the amended regulations as presented. Dr. Allison-Bryant seconded the motion and it carried unanimously.

- Board Action – Proposed Fast-Track Regulation

Ms. Yeatts advised that the recommendation comes from the Committee of the Joint Boards of Nursing and Medicine, and that the proposed amendments will align the category titles with the certifying bodies.

Dr. O'Connor moved to accept the recommended fast-track regulation. Dr. Tuck seconded the

motion; it carried unanimously.

- Petition for Rulemaking – Physician Assistant

Ms. Yeatts referred to the petition submitted by Cara English in which she requests the Board to consider amending 18VAC-85-50 to replace the requirement for NCCPA certification with other measure(s) of continuing competency for renewal of a physician assistant license. Ms. Yeatts advised that the Advisory Board on Physician Assistants had reviewed the petition and recommends denial.

After discussion, Dr. Allison-Bryan moved to accept the recommendation of the Advisory Board. The motion was seconded by Dr. Mackler. The motion carried by majority with Dr. Farquhar opposing. The petition was denied because the PA has the opportunity for multiple attempts to take the exam before the expiration date of the license, and in extenuating circumstances, can request an extension from NCCPA.

Adoption of Fast-Track Action on elimination of supervising physician name on prescriptions

Ms. Yeatts reminded the Board that at its February meeting it considered a recommendation from the Advisory Board on Physician Assistants to eliminate the requirement to have the name of the supervising physician on prescriptions written by a physician assistant. However, it was tabled until additional information could be presented on any limitations or implications this recommendation may have.

Voting on each section separately, Dr. Allison-Bryan moved to accept the following:

18VAC85-50-160(B). The physician assistant shall disclose to the patient that he is a licensed physician assistant, and also the name, address and telephone number of the supervising physician. Such disclosure ~~may~~ shall either be included on the prescription ~~pad~~ or ~~may~~ be given in writing to the patient.

The Board agreed unanimously.

Ms. Yeatts stated that the Board had three options for 18VAC85-50-160(A)

- 1- Retain as written
- 2- Accept the recommendation of the Advisory Board and strike it completely
- 3- Or, amend to say “Each prescription for Schedules II through V shall bear the name of the supervising physician and physician assistant”.

After some discussion, Dr. Allison-Bryan moved to accept the recommendation of the Advisory Board. The motion was not seconded.

Dr. Ali expressed concern about the removal of the requirement, especially for controlled substances, based on the disciplinary cases brought before the Board.

Dr. Harp pointed out (A) is communication to the pharmacist, and (B) is communication to the patient.

Ms. Gore asked if the thought process of the Advisory Board was once the name of the supervising physician was removed if the pharmacist had questions about the prescription, then the pharmacist would be responsible for researching and obtaining the contact information for the supervising physician? Ms. Gore, speaking from her experience as a pharmacy technician, stated that it is not as easy as it sounds, especially when you work in a retail environment. Ms. Gore included that lack of accessible information may decrease the patient's access to the medicine and increase the margin of error.

After additional discussion, Dr. Ali moved to decline the recommendation of the Advisory Board and to amend (A) as "*Each prescription for Schedules II through V shall bear the name of the supervising physician and physician assistant.*" The motion was seconded by Dr. Mackler and carried by majority with Dr. Allison-Bryan opposing.

Recommendation for Legislative Proposal

Ms. Yeatts informed the Board that the draft legislation to change the statutory provision under **54.1-2901 Exceptions and exemptions generally. A(16)**, from issuance of a "temporary license for practice" in a summer camp, continuing education program, or voluntary practice in a "free clinic" to issuance of "authorization to practice". The draft language would also eliminate the requirement to promulgate regulations.

Dr. Mackler moved to recommend the legislative proposal for introduction in the 2016 General Assembly session. Dr. Ali seconded, and the motion carried unanimously.

Website Posting on Autism Spectrum Disorder

Ms. Yeatts reminded the Board of the requirement for it to post information on its website information about autism spectrum disorder including information about diagnosis, the role of health care providers and services available. She advised that an Ad Hoc Committee was formed and vetted over 40 websites for their reliability, richness of information and utility for the public and practitioners alike.

Ms. Yeatts advised that the content does not need to be approved, but the Board is being asked to authorize the Executive Director to post information about autism spectrum disorder as recommended by the Ad Hoc Committee and to update the information as appropriate.

Dr. Mackler moved the recommended motion and Dr. Ali seconded; it passed unanimously.

Guidance documents – Nurse Practitioners

Ms. Yeatts presented the recommendation of the Committee of the Joint Boards of Nursing and Medicine to amend **Guidance Document 90-11 Continuing Competency Violations for Licensed Nurse Practitioners**. The amendment clarifies the resolution of continuing

competency violations.

Dr. Mackler moved to accept the amended guidance document as presented. Ms. Kleine seconded, and the motion carried unanimously.

Ms. Yeatts explained that to be consistent with the Code and provide a level of protection for the LNP should they lose the relationship with their supervising physician, **Guidance Document 90-56 Practice Agreement Requirements for Licensed Nurse Practitioners** is being amended to include: *The LNP should consider identifying a back-up collaborating physician in the event of the unexpected departure of the patient care team physician. The practice agreement should either state the name or include the signature of the physician who will serve in the role of an alternative team physician in the event the primary team physician is no longer available for collaboration and consultation.* She noted that the Board of Nursing will consider this language in July.

Dr. Mackler moved to accept the amended guidance document. Dr. Allison-Bryan seconded after confirming that it was clear that the LNP is never to function without a collaborating physician. The motion carried unanimously.

Dr. Reynolds called for a 15 minute break; the meeting reconvened at 10:29 a.m.

LICENSING REPORT

- Licensing Statistics

Mr. Heaberlin reviewed with the Board an updated licensee count, licenses issued, and license renewal/expiration count report.

These reports were for informational purposes only and did not require any action.

- One-Year Grace Period for Polysomnographic Technologists

Mr. Heaberlin explained that the licensure for this profession became effective on December 31, 2014 and that all new professions have historically been given a one-year grace period before issuing a consent order for unlicensed practice. Dr. Harp added that the grace period would provide time for the knowledge of the requirement of licensure to get into community since it would be done by word of mouth.

Dr. Mackler moved to grant the one-year grace period for the polysomnographic technologists with Dr. Clements seconding. The motion was carried unanimously.

- Continuing Education Audit

After providing a brief report on the progress of the continuing education audit, Mr. Heaberlin asked the Board to consider a random representative sample size audit. Mr. Heaberlin stated that traditionally there has been a 1-2% (approximately 350 licensees) done without any statistical

basis, and that a random representative sample would be approximately 380 licensees.

Dr. Allison-Bryan moved to approve that the Board conduct a random representative sample for the continuing education audit. The motion was seconded and carried unanimously.

DISCIPLINE REPORT

Ms. Deschenes pointed out to the Board members that presently the non-compliant continuing education cases are to be referred to discipline, which will create a workload that may have to be handled by informal hearings. In order to avoid this, Ms. Deschenes asked the Board to consider the development of a guidance document similar to that of the Committee of the Joint Boards of Nursing and Medicine, and to include the disclaimer noted in the Board of Pharmacy's guidance document. Those licensees that fall a few hours short with no endangerment to the public are to be offered a confidential consent agreement that requires the need hours to be obtained. For those that are determined to be willfully non-compliant or egregious in not obtaining hours, their cases would be handled differently.

Dr. Mackler moved to approve the development of a guidance document to address handling of licensees who are non-compliant with the continuing education requirement. Dr. Walker seconded and the motion carried unanimously.

Ms. Deschenes then provided a case status update, noting the low numbers in Enforcement.

Ms. Deschenes also informed the members that at the conclusion of a standard of care case involving 5 licensees, one of the respondents approached MSV and proposed that the Board's cases involving standard of care be reviewed by an outside expert. Ms. Deschenes reminded the members that they are the sitting experts in the hearings. An outside expert would be contracted if the standard of care questions appear to lie outside the expertise of Board members and Board staff.

2016 PROPOSED MEETING DATES

Dr. Allison-Bryan moved to accept the 2016 calendar of meeting dates as presented. Ms. Gore seconded and the motion carried unanimously.

SLATE FROM THE NOMINATING COMMITTEE

The Nominating Committee comprised of Dr. Mackler and Dr. Farquhar presented the following slate for consideration: Kenneth J. Walker, MD – President; Barbara Allison-Bryan, MD – Vice-President; and Kevin O'Connor – Secretary/Treasurer.

With no other nominations from the floor, the slate was accepted by acclamation.

REMINDERS PAGE

Travel vouchers for today's meeting should be submitted no later than July 20, 2015.

ANNOUNCEMENTS

No announcements.

Adjournment: With no other business to conduct, the meeting adjourned at 10:55 p.m.

Wayne J. Reynolds, DO
President, Chair

William L. Harp, MD
Executive Director

Colanthia M. Opher
Recording Secretary