

**State Board of Health  
Minutes  
March 16, 2017 – 9:00 a.m.  
Perimeter Center, 9960 Mayland Drive  
Richmond, Virginia 23233**

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

Members absent: Tommy East and Benita Miller, DDS

VDH staff present: Dr. Marissa Levine, State Health Commissioner; Richard Corrigan, Deputy Commissioner for Administration; Bob Hicks, Deputy Commissioner for Community Health Services; Dr. Hughes Melton, Chief Deputy Commissioner; Joe Hilbert, Director of Governmental and Regulatory Affairs; Cathy Peppers, Administrative Assistant; Catherine West, Administrative Assistant; Maribeth Brewster, Risk Communications Manager; Erik Bodin, Director, Office of Licensure and Certification; Steve Harrison, Director, Office of Radiological Health; Dr. Adrienne McFadden, Director, Office of Health Equity; Steve Sullivan, Deputy Director, Office of Financial Management; Dr. Vanessa Walker Harris, Director, Office of Family Health Services; Susie Puglisi, Policy Analyst, Office of Family Health Services; Scott Winston, Assistant Director, Office of Emergency Medical Services; Micah Fairchild, Director, Division of Human Resources Policy and Systems Improvement; and Sharon Ortiz-Garcia, District Epidemiologist, Western Piedmont Health District

Others Present: Robin Kurz, Sean Murphy, and Allyson Tysinger, Office of the Attorney General; Gary Critzer, Chair, State Emergency Medical Services Advisory Board; Michel Aboutanos, MD, MPH, Chair, Trauma System Oversight & Management Committee

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

Following introductions, Mr. Edwards welcomed the public to the meeting. Mr. Hilbert then reviewed the agenda and the items contained in the Board's notebooks. Mr. Hilbert told the Board that VDH recommended that the Board defer consideration of the agenda item concerning the fast track amendments for the Regulations for the Licensure of Nursing Facilities (12VAC5-371) because staff in the Office of the Attorney General had not had adequate time to review the regulatory text for this item. With that change to the agenda, it was approved by unanimous consent.

## Approval of Minutes

Mr. Edwards told the Board that at the December 2016 meeting, Mr. Beall and Ms. Getter had proposed changes to the draft minutes for the Board's September and October 2016 meetings. The Board deferred adoption of the minutes from those meetings so that Board members would have time to review the proposed amendments. Mr. Edwards told the Board that while members are concerned about getting the content right and it has been the Board's custom to make changes when clarifications are needed, verbatim notes are not taken of the meeting nor is it recorded. Mr. Edwards told the Board that approval of the minutes for the September, October, and December 2016 meetings will be done separately for each meeting. Ms. Prichard moved that the September 2016 minutes be approved with Ms. Hines seconding the motion.

Ms. Getter asked if that motion included the proposed changes she had for the September meeting minutes and Mr. Edwards answered no, it did not. Ms. Getter made a motion to add the following to the end of the second paragraph on page two: "and that there is no need to rush considering all facilities currently have a valid license or variance, no facilities have ever been denied a license nor have they closed due to the current regulations being evaluated for amendment, and all Board members already have the December meeting on their calendars." Ms. Getter further moved that the words "thousands of dollars of" be inserted between the words "today's meeting there was" and "additional expense" in the second sentence of the first paragraph on page five. Mr. Beall seconded the motion. Mr. Edwards called for a vote by show of hands on this motion to amend the draft minutes for the September 2016 meeting. The vote was nine ayes (Mr. Beall, Ms. Brosche, Ms. Getter, Ms. Hines, Mr. Kuhlman, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), three nays (Mr. Edmondson, Dr. Klein, and Ms. Prichard), and Mr. Edwards did not vote. The motion was approved. Mr. Edwards then called for a vote by show of hands on the main motion to approve the draft minutes for the September 2016 meeting as amended above. The vote was nine ayes (Mr. Beall, Ms. Brosche, Ms. Getter, Ms. Hines, Mr. Kuhlman, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), three nays (Mr. Edmondson, Dr. Klein, and Ms. Prichard), and Mr. Edwards did not vote. The September 2016 minutes were approved.

Ms. Whipple made a motion to approve the draft minutes from the October 2016 meeting with Mr. Edmondson seconding the motion. Mr. Beall made a motion to amend the draft minutes as proposed in the document that was sent to the Board prior to the meeting and attached to these minutes as Appendix A. Ms. Getter seconded the motion. Mr. Edmondson commented that the amendments are overly detailed and do not follow the general rule that the minutes should be a summary of what occurred at the meeting. Mr. Beall commented that he had a prepared statement which he read at the October 24 meeting and that words have meaning. Mr. Beall indicated that while Ms. West does a great job to capture words said at the meeting, it is difficult to capture everything that is said. He went on to say that he wanted the minutes to reflect what he shared when reading his statement. Mr. Beall also told the Board that he wants to allow people to review what previous Boards have done, and to make the public aware of what the discussions were before a vote is taken. Mr. Beall said further that minutes should be reflective of comments that are made, it has been the Board's custom to accept changes to the minutes proposed by Board members, and that his proposed changes are appropriate adjustments to more

closely reflect what he said at the meeting. Ms. Getter told the Board that she concurred that Mr. Beall's proposed changes would result in the minutes accurately reflecting the discussion that took place during the October 24<sup>th</sup> meeting.

Mr. Edmondson said that he was prepared to ask for separate votes for the various changes that Mr. Beall had proposed, noting that he did not have the same level of objection to all of the proposed changes. Mr. Edwards told the Board that all of Mr. Beall's proposed changes would be voted on in a block.

Mr. Edwards called for a vote by show of hands on this motion to amend the draft minutes for the October 2016 meeting as proposed by Mr. Beall. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman), eight nays (Mr. Edmondson, Ms. Hines, Dr. Klein, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), and Mr. Edwards did not vote. The motion failed.

Ms. Getter then made a motion to amend the draft minutes as proposed in the document that was sent to the Board prior to the meeting and attached to these minutes as Appendix B. Mr. Kuhlman seconded the motion. Mr. Edwards called for a vote by show of hands on this motion to amend the draft minutes for the October 2016 meeting. The vote was four ayes (Mr. Beall, Ms. Brosche, Ms. Getter, Mr. Kuhlman), eight nays (Mr. Edmondson, Ms. Hines, Dr. Klein, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), and Mr. Edwards did not vote. The motion failed.

Mr. Edwards then called for a vote by show of hands on the main motion to approve the draft minutes for the October 2016 meeting. The vote was eight ayes (Mr. Edmondson, Ms. Hines, Dr. Klein, Ms. Prichard, Dr. Puritz, Dr. Shuler, Ms. Swartz, and Ms. Whipple), four nays (Mr. Beall, Ms. Brosche, Ms. Getter, and Mr. Kuhlman), and Mr. Edwards did not vote. The October 2016 minutes were approved.

Ms. Getter told the Board that the minutes should be the least controversial thing that the Board does; that there was no reason for the changes she had proposed not to be made; and that by not approving the proposed changes the Board had violated Robert's Rules of Order. Ms. Whipple referred back to the beginning of the discussion about the minutes, saying that the Board does not take verbatim minutes, and that changes should be made only to those portions of the minutes that need correction. Ms. Getter responded by saying that there are items in the minutes that are not correct and not approving the amendments changes the intent of what was done. She further stated that Robert's Rules says that minutes should reflect what happens and is said at meetings. Mr. Beall asked if the proposed amendments would be included in the minutes for this meeting; Mr. Edwards indicated that they would. Ms. Whipple noted that the minutes should reflect that the proposed amendments were received by the Board but not approved by the Board.

Mr. Edwards asked if there was any discussion concerning the draft minutes for the December 2016 meeting. No corrections were noted. The December 2016 minutes were approved by unanimous consent.

## Commissioner's Report

Dr. Levine began the Commissioner's report to the Board with the introduction of the "agency stars" for the meeting: Micah Fairchild with the Office of Human Resources and Sharon Ortiz-Garcia with the Western Piedmont Health District.

Dr. Levine briefed the Board on the status of the opiate addiction public health emergency. This included updated statistics concerning opioid overdoses and deaths, as well as data concerning Hepatitis C cases. VDH's public health approach to responding includes prevention, screening/treatment and harm reduction components, was discussed. There was additional discussion concerning the difference between prescription and illicit opioids, and how the emergency varies from one region of the state to another. Dr. Levine briefly mentioned legislation enacted by the 2017 General Assembly Session, authorizing the Commissioner to establish comprehensive harm reduction programs, including needle exchange. Dr. Levine emphasized that Virginia is not the only state dealing with these issues, and told the Board that Maryland has also declared an emergency. Effective response to this public health emergency will require concerted effort at the community level, or else Virginia is at risk of losing a generation of young people. Dr. Levine told the Board that she is hoping to be able to report positive results one year from now.

Next, Dr. Levine updated the Board on the status of VDH's review of an application submitted by Wellmont Health System and Mountain States Health Alliance for a Letter Authorizing a Cooperative Agreement. In 2015, the General Assembly enacted legislation authorizing the Commissioner to approve cooperative agreements between hospitals in Southwest Virginia. A cooperative agreement can insulate parties from anti-trust considerations when 1) it is determined by the state that the benefits of the cooperative agreement outweigh the disadvantages resulting from the loss of competition and 2) the state actively monitors the resulting entity to ensure that the benefits continue to outweigh the disadvantages and that all agreed upon goals and thresholds are met. In December 2016, VDH received a completed application. Earlier this year, the applicants withdrew their application that had previously been submitted to Tennessee, which resulted in a revamped time period for Tennessee and Virginia to make their respective decisions concerning the application. Currently, Virginia has until August 15 to issue a decision, assuming that the application is deemed complete by Tennessee by May 1. Extensive information concerning the application is contained on the VDH website. In response to a question, Dr. Levine told the Board that VDH believes that both health systems are in good financial condition.

Next, Dr. Levine told the Board that according to the 2016 America's Health Rankings, Virginia is the 19<sup>th</sup> healthiest state in the country, which represents a relative improvement from 2015 when Virginia was ranked 21<sup>st</sup>. One of Virginia's strengths in comparison to other states was a relatively low number of drug-related deaths; however, that could worsen given the current opioid addiction emergency. Also, Virginia's decrease in immunization rates during 2016 is concerning to Dr. Levine. According to Dr. Levine, significant racial and other disparities prevent Virginia from being the healthiest state. She told the Board that Virginia is not doing enough to address the social determinants of health. As is made clear in the Plan for Well-Being, health involves more than health care. There was discussion concerning racial disparities

underlying the infant mortality rate, as well as a relative lack of physical activity among the adult population. VDH will be promoting the importance of physical activity during Virginia Public Health Week starting on April 1. Dr. Levine also reviewed with the Board various key metrics from the Plan for Well-Being:

- Obesity is decreasing.
- Tobacco use is decreasing.
- Lower influenza immunization rates.
- Seeing improvements in HPV vaccination rates.
- Still seeing a population that has greater rates of disability than is preferred, VDH wants to prevent disability if it all possible.
- More adults report having fewer poor health days.
- More health care providers using electronic health records. Dr. Levine told the Board that budgetary restrictions have prevented VDH from moving in the direction of implementing electronic medical records in the local health departments.

There was discussion concerning healthcare associated infections, specifically *Clostridium difficile* (*C. diff*), access to care, and the importance of community health assessments. Dr. Levine also told the Board that this year's Population Health Summit will focus on the opioid addiction emergency, and how Virginia's Plan for Well-Being can provide a framework for the state's response.

Dr. Levine then updated the Board concerning Zika. VDH has not stopped monitoring for Zika, particularly among those people who are travelling to regions where there are known to be Zika-infected mosquitos. Zika is not yet present in Virginia's mosquito population, but Dr. Levine is concerned that eventually it will be present in the state's mosquitos. VDH will be reconvening the state Zika task force, and will make sure that health care providers are updated with the most current information. VDH will also start the state's Zika case count at the beginning of "mosquito season" on May 1. VDH will also prioritize public health testing with a focus on pregnant women with exposures, as well as their infants and sex partners. Limited financial resources to carry out Zika prevention and response activities continue to be an issue.

Next, Dr. Levine told the Board that the VDH Office of Radiological Health (ORH) plans to initiate a regulatory action in order to propose fee increases to support the x-ray and radioactive materials programs. Program fees have not been increased since 2009. Due to increasing costs and a reduction of state general fund support, ORH is projecting a FY18 deficit of \$345,000. A fee increase of about 40 percent will be needed to sustain the programs. The function performed by ORH is critical to protect public health.

Dr. Levine provided an update on recent VDH key personnel changes:

- Dr. Noell Bissell – Director of the New River Health District;
- Dr. Scott Spillman – Director of Pittsylvania/Danville and Southside Health Districts; and
- Dr. Melissa Viray – Deputy Director of the Richmond City Health District.

Dr. Levine ended the Commissioner's report by telling the Board that National Public Health Week is the first week in April. She told the Board that VDH intends to promote the Plan for Well-Being and public health.

There was further discussion concerning the state's opioid addiction public health emergency, pertaining to differences between prescription and illicit opioids, and pain management. There was additional discussion concerning the importance of educational attainment and employment status as social determinants of health. There was also discussion concerning the American Health Care Act (AHCA) currently pending in Congress, and its implication for VDH and public health overall. Dr. Levine told the Board that VDH has communicated its concerns regarding the impact of the AHCA on public health funding levels to its federal partners.

There was additional discussion concerning Hepatitis C rates and the cost of treatment, as well as discussion concerning maternal and reproductive health.

### Budget Update

Mr. Sullivan provided an update on the budget. He provided historical information on VDH's appropriation levels. Final legislative action on the budget is pending completion of the one day reconvened legislative session on April 5. Mr. Sullivan reviewed with the Board the mandatory general fund budget reduction exercise that VDH participated in during the summer of 2016. VDH had to submit proposed general fund budget reductions totaling \$8.1 million. The actual VDH general fund reductions that were included in the Governor's Budget Bill were approximately \$1 million.

Mr. Sullivan discussed several VDH-related items that were included in the Governor's Budget Bill that were not subsequently approved by the General Assembly. These included:

- Transfer of federally-funding adult and child feeding programs to the Department of Education;
- \$6 million to support long acting reversible contraception methods;
- Increase in restaurant permit fees, but with a requirement that VDH further study the issue; and
- New fee for shellfish sanitation.

Mr. Sullivan also discussed several VDH-related items that were included in the Governor's Budget Bill that were approved by the General Assembly. These included:

- Assume responsibility for STI testing;
- Authorize the issuance of certified copies of birth, marriage and divorce records by local health departments;
- Funding for perinatal quality collaborative;
- Funding to support the reporting of neonatal abstinence syndrome; and
- Funding for emergency department care coordination.

Mr. Sullivan also briefed the Board concerning the 3% employee salary increase approved by the General Assembly.

There was an extended discussion concerning restaurant permit fees and the study that VDH is required to conduct. Ms. Brosche recommended that the study look at the current cost of permitting and inspecting restaurants, and the current resources available to support that cost.

Mr. Hicks told the Board that, whenever the General Assembly increases a fee, it does not result in a net increase in funds available to VDH, because the General Assembly routinely takes from VDH an equivalent amount of general funds. There was further discussion concerning what would constitute an appropriate restaurant permit fee as well as the state budget process.

### Legislative Update

After a short break, Mr. Hilbert provided the legislative update. He summarized several of the bills that were enacted by the General Assembly which directly or indirectly pertained to public health. These included:

HB2317 – Authorizes the State Health Commissioner, during a declared public health emergency, to establish and operate comprehensive harm reduction programs in high risk communities. The programs would be administered pursuant to protocols approved by the Secretariats of Public Safety and Health and Human Resources.

HB1750 – Authorizes pharmacists to dispense naloxone or other opioid antagonist pursuant to a standing order issued by the State Health Commissioner, in accordance with protocols developed by the Board of Pharmacy in consultation with the Board of Medicine and VDH.

HB2162 – Requires the Secretary of Health and Human Resources to convene a work group to study barriers to treatment of, and to develop legislative, budgetary, and policy recommendations for the elimination of those barriers for substance exposed infants in the Commonwealth.

HB1467/SB1323 – Requires the Board of Health to adopt regulations to include neonatal abstinence syndrome on the list of diseases that are required to be reported.

HB1615 – Provides that the Chief Medical Examiner may appoint a medical examiner for each county or city in the Commonwealth. This bill changes the “shall” to “may” so that the Code reflects actual practice (VDH has not been able to appoint a medical examiner in each county or city in the Commonwealth).

HB1840 – Strikes the prescribed “purposes” for which human immunodeficiency virus test information may be released, and specifies that such information may only be released to persons or entities permitted or authorized to obtain protected health information under any applicable federal or state law. This eliminates a potential barrier for usage of electronic medical records or health insurance exchanges.

HB2300 – Requires that no entity that VDH inspects (EMS vehicle or agency, hospital, nursing home, hospice, home care organization, restaurant, summer camp, campground, hotel) receive another inspection until all other entities have also been inspected. However, the bill establishes the following exceptions: 1) necessary to follow-up on a preoperational inspection of one or more violations; 2) required by a uniformly applied risk-based schedule established by VDH; 3) necessary to investigate a complaint; or 4) otherwise deemed necessary by the Commissioner to protect public health.

HB1846 – Allows a non-electronically filed death certificate to be filed with the registrar of any health district in the Commonwealth; thus not limited to filing in the health district where the death occurred.

HB2477 – Requires VDH to implement eight of the 20 recommendations contained in VDH’s November 28, 2016 report, prepared pursuant to HB558 of the 2016 General Assembly session. This report was offered by VDH to the General Assembly to ensure an orderly reduction and elimination of direct services provided by VDH for the evaluation and design of onsite sewage systems and private wells. The bill further requires VDH to report to the General Assembly by November 1, 2017 on its progress in implementing the eight recommendations.

SB1577 – Requires VDH to evaluate the need for 180-day biochemical oxygen demand sampling of small alternative sewage systems dispersing an average flow of 1,000 gallons per day or less of residential strength sewage. The bill further requires VDH to report its findings to the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by December 1, 2017.

HB1625 – Requires VDH to issue a license in the form of a sticker to a mobile food unit. The bill also adds the definition of a mobile food unit mirroring the definition provided in the Food Regulations.

HB2209/SB1561 – Provides for a single, statewide technology solution that connects all hospital emergency departments in Virginia to facilitate real-time communication and collaboration among physicians, health care providers, and clinical and care management personnel for patients in hospital emergency departments. The overall objective is to improve the quality of patient care services.

HB1728 – Directs VDH to convene a workgroup to review the rules, regulations, and protocols governing the use and dispatch of air medical services in emergency medical situations. It also directs VDH to develop recommendations for changes that will address differences in procedures governing dispatch of air medical services; differences in billing; and other issues related to the use of air medical services. VDH must report its findings and recommendations to the Governor and General Assembly by December 1, 2017.

HB2404 – Creates an advisory council on pediatric autoimmune neuropsychiatric disorders associated with streptococcal infections and pediatric acute-onset neuropsychiatric syndrome for the purpose of advising the State Health Commissioner on research, diagnosis, treatment, and education related to these conditions. The advisory council shall report to the Governor and General Assembly annually until 2020.

HB1675/SB974 – Requires VDH to make information about palliative care available to the public on its website.

HB1747/SB1242 – Defines “qualified advance directive facilitator” as a person who has successfully completed a training program approved by VDH for providing assistance in

completing and executing an advance directive. It also requires VDH to approve a training program for qualified advance directive facilitators and prescribes certain requirements for such program.

HB1921/SB973 – Expands the scope of the penalty for battery against emergency health care providers in an emergency room to include any health care provider who is engaged in the performance of his/her duties in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care. The bill requires VDH to work with stakeholders to develop guidelines regarding the publication of penalties for battery and training of health care professionals and providers in violence prevention programs.

SB1359 – Requires each local school board to develop and implement a plan to test and remediate all high priority water sources in schools as identified by EPA.

In response to a question by Ms. Getter, Mr. Hilbert indicated that VDH does not know the number of individuals or percent of the population that get their primary health care through emergency departments in different localities. Ms. Hines commented that while specific statistics are not known for this group of people, when we look at the opioid crisis, a lot of those individuals receive care from emergency departments in different localities. The bill that requires the emergency department care coordination program will help identify those individuals who receive care at multiple locations and that are not connected to a primary care physician.

There was discussion concerning HB1747/SB1242. Mr. Hilbert explained to the Board that an underlying purpose of the bill was to promote greater use of advance directives, and to remove a perceived barrier to their greater use.

#### Abortion Facility Licensure Status Report

Mr. Bodin provided the Board with the abortion facility licensure update. There are currently 14 licensed facilities in Virginia, nine of which have approved variances. Four of the licensed facilities are in the process of applying for licensure renewal, which was due March 2. While the Code is silent on a time frame to receive applications for renewal, if the application is not received within 60 days of the expiration of the license, the application cannot be treated as a renewal. All 2016 biennium inspections have been completed. Eight inspection first revisits have been completed; three inspection second revisits have been completed; and all second revisit inspections resulted in a deficiency-free inspection. One complaint has been received since the last Board meeting; it has been triaged but not investigated as of the date of the meeting. This is the first complaint that has been received since July 2016.

At the December 2016 Board meeting, OLC was asked to provide the number of abortions performed. Included in the material provided to the Board is a chart that provides that data, which comes from VDH's Division of Health Statistics. The data includes abortions performed at either licensed facilities or in hospitals in Virginia.

## Matrix of Pending Regulatory Actions

Mr. Hilbert reviewed the summary of all pending VDH regulatory actions. Since the December 2016 meeting, there has been one regulatory action that the Commissioner took on behalf of the Board while the Board was not in session: approval of a Notice of Intended Regulatory Action for the Emergency Medical Services Regulations (12VAC5-31).

Mr. Hilbert advised the Board that there are seven periodic reviews in progress:

- State Medical Facilities Certificate of Public Need Rules and Regulations (12VAC5-220);
- Regulations for Licensure of Hospice (12VAC5-391).
- Certificate of Quality Assurance Managed Care Health Insurance Plan Licensees (12VAC5-408);
- Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps (12VAC5-501);
- Regulations Governing the Virginia Medical Scholarship Program (12VAC5-530);
- Regulations for the Nurse Educator Scholarship Program (12VAC5-545); and
- Private Well Regulation (12VAC5-630).

## Public Comment

There were no comments from any member of the public.

## Lunch Presentation

Dr. Levine introduced Scott Winston, Assistant Director of VDH's Office of Emergency Medical Services (OEMS) as one of the lunch speakers. Mr. Winston told the Board that he would be joined by Gary Critzer and Dr. Michel Aboutanos during the presentation to the Board. Mr. Winston told the Board about the background and evolution of OEMS; the services that OEMS is responsible for; and OEMS funding sources. Mr. Winston told the Board that there are 634 licensed agencies and 4,225 permitted vehicles in Virginia and that there are 34,868 certified EMS providers in Virginia made up of individuals providing basic life support, advanced life support, instructors, and physicians. Mr. Winston also told the Board about EMS training that is provided through OEMS; approximately 12,000 providers are certified and re-certified on an annual basis. OEMS also hosts the annual Virginia EMS Symposium which is one of the largest EMS training events in the nation.

Mr. Critzer gave the Board an overview of the State EMS Advisory Board. The Advisory Board is comprised of 14 standing committees and workgroups that conduct much of the work of the Board. Items that are approved by the Advisory Board are then brought to the Board of Health for approval before implementation. Mr. Critzer also gave an overview of the Virginia Trauma System. He told the Board that a comprehensive evaluation of that system had been conducted in September 2015. The report of that evaluation identified over 100 recommendations impacting all aspects of EMS and the trauma system. The Trauma System Plan Task Force was

appointed by the Advisory Board to review the report and its recommendations. The work is ongoing and once a final draft plan has been approved by the Advisory Board, it will come to the Board of Health for approval.

Dr. Aboutanos shared a video with the Board that showed the medical treatment of an individual who had been involved in a motorcycle accident; from transport by EMS responders to treatment in the hospital to final recovery. Dr. Aboutanos also told the Board about the progress to-date of the Trauma System Plan Task Force workgroups on drafting a final plan to address the recommendations made by the evaluation conducted in September 2015. Dr. Aboutanos told the Board that a stable source of funding, strong support from the EMS community and OEMS, and the recognition of the significant challenges for the trauma system are all key components to ensuring a good system of trauma care in Virginia.

There was a discussion about the percentage of EMS providers that are volunteers vs. paid staff; the belief that the decline for the number of volunteers is due to difference of priorities for the present generation; and the community paramedicine program.

#### Board Action Item

##### *State Emergency Medical Services Plan*

Mr. Winston presented the state emergency medical services plan. The plan is comprised of four main core strategies for the next three to five years, with each core strategy having several key strategic initiatives. The plan was last approved in 2014 and this update was approved by the State EMS Advisory Board in November 2016. Dr. Klein moved that the state emergency medical services plan be approved with Ms. Hines seconding the motion. Mr. Edwards called for a voice vote to approve the state emergency medical services plan. The motion was approved unanimously.

#### Regulatory Action Items

##### *Virginia Radiation Protection Regulations: Fee Schedule (12VAC5-490) – Final Amendments*

Mr. Harrison presented the final amendments, which will amend the regulations to include fees for the registration and inspection of non-medical x-ray equipment as well as a schedule for inspection frequency for this type of equipment. The final amendments also include updates to the current fee schedule for diagnostic x-ray machines, to specify that they are to be inspected every three years. There have been no changes between the proposed and final amendments to the regulations. Mr. Harrison told the Board that this regulatory action is the second in a continuing series of regulatory initiatives VDH is pursuing to increase funding for the radiological health program. Dr. Puritz moved that the final amendments be approved with Ms. Hines seconding the motion. The final amendments were approved unanimously by a voice vote.

*Regulations for Physician Assistant Scholarship Program (12VAC5-525) – Final Regulations*

Dr. McFadden presented the final regulations. The 1997 Virginia Acts of Assembly amended and reenacted § 32.1-122.6:03 of the Code of Virginia to require the establishment of an annual physician assistant scholarship program for students who intend to enter an accredited physician assistant program. Dr. McFadden told the Board that the regulations provide a framework for the scholarship program if and when the General Assembly funds the program (the program is unfunded at this time). The final regulations contain provisions pertaining to definitions, composition of an advisory committee, eligibility and conditions for scholarships, and the process to apply, deadlines, selection criteria, contract requirements, practice site selection, and repayment information for scholarships. There has been one change to the final regulations between the proposed and final stage; in 12VAC5-525-50, the maximum length of the scholarship period has been changed from four years to three. Of the existing accredited physician assistant programs available in Virginia, no program has a curriculum that exceeds 30 months or three academic years. Ms. Prichard moved that the final regulations be approved with Dr. Shuler seconding the motion.

Mr. Edwards reminded the Board of the email that was sent prior to the meeting that contained three proposed amendments from Ms. Brosche. Mr. Edwards asked if the Board was comfortable with Ms. Brosche making one motion to incorporate all of the changes in the areas outlined in her document. Hearing no dissent, Ms. Brosche then made a motion that the three amendments sent to the Board prior to the meeting be approved. Ms. Whipple seconded the motion. The three amendments are as follows:

1. On page three, in 12VAC5-525-40 B, at the beginning of the sentence, replace the words “For each \$5,000 of scholarship money received” with the words “For each scholarship received”.

2. On page three, in 12VAC5-525-40 E, after the words “the participant or his personal representative,” remove the words “upon repayment of the total amount of scholarship funds received plus applicable interest, may be relieved of his obligation under the contract to engage in medical practice. For participants completing part of the PA obligation prior to becoming permanently disabled or in the event of death, the total amount of scholarship funds owed shall be reduced by the proportion of obligated years served. The obligation to make restitution may be waived by the board upon application of this participant or the participant’s personal representative to the board”. The following words would be inserted to replace the deleted text: “may request the board waive his obligation under the contract as described in 12VAC5-525-130”. That subsection now reads:

E. If the participant is in default due to death or permanent disability so as not to be able to engage in medical practice, the participant or his personal representative may request the board waive his obligation under the contract as described in 12VAC5-525-130.

3. On page three, in 12VAC5-525-40 60, remove the last sentence of the subsection which reads “Each participant shall receive an award of \$5,000 per year”.

There was a discussion that the rationale to remove the dollar amounts in amendments 1 and 3 gives VDH greater flexibility to increase or decrease the amount of the scholarship based on the funding for the program. The Code does not indicate a specific amount of money. There was further discussion that applicants may receive varying amounts of scholarship; that there should be a minimum amount set; that there should be a consistent amount per scholarship; and that sometimes the process for applying for a scholarship outweighs the benefit if the scholarship amount is small. Based on this discussion, Ms. Brosche withdrew amendments 1 and 3. Mr. Edwards then called for a vote on this motion to amend the final regulations as presented by VDH (with amendment 2 only). The motion passed unanimously by a voice vote.

There was a discussion about whether the cite to the federal statute on page two in 12VAC5-525-30 1 (8 USC §1621) is correct or whether the cite should be 8 USC §1641. This citation pertains to the definition of a qualified alien. Ms. Kurz told the Board that the citation is correct as stated on page two.

There was a discussion about assessing penalties and whether the word “restitution” needed to be defined. There was also a discussion on whether to include in the regulations that the funds received as repayments of awarded scholarships are returned to the scholarship fund.

There being no further discussion, Mr. Edwards called for a vote on the main motion to approve the final regulations as amended during the foregoing discussions. The final regulations were approved unanimously by a voice vote. Dr. Shuler had to leave the meeting before the final vote was taken on this regulatory action and did not return for the remainder of the meeting.

*Regulations Governing the Dental Scholarship and Loan Repayment Programs (12VAC5-520) – Proposed Amendments*

Dr. Walker Harris presented the proposed amendments, which are the result of a periodic review. The regulations have not been comprehensively revised in over a decade. The proposed amendments will make this regulatory chapter consistent with similar scholarship and loan repayment programs VDH administers. The proposed amendments also include corrections to definitions; formatting changes to make the regulations easier to read; and correction of language and insertion of language regarding the penalty to be paid in the event the recipient defaults on the scholarship. Ms. Prichard moved that the proposed amendments be approved with Dr. Klein seconding the motion.

Mr. Edwards reminded the Board of the email that was sent prior to the meeting that contained 17 proposed amendments from Ms. Brosche. Ms. Brosche indicated that she was withdrawing the amendment to line 148, thus making the number of proposed amendments 16. Mr. Edwards asked if the Board was comfortable with Ms. Brosche making one motion to incorporate all of the changes in the 16 areas she had outlined in her document. Hearing no dissent, Ms. Brosche

then made a motion that the 16 amendments sent to the Board prior to the meeting be approved. Ms. Prichard seconded the motion. The 16 amendments are as follows:

1. On page one, in 12VAC5-520-10, in the definition of “dental practice”, replace the words “geographic area determined” with the words “location within Virginia that is designated as a dental underserved area” after the words “dentistry in a” and before the words “to be fulfillment”.
2. On page one, in 12VAC5-520-10, in the definition of “dental practice”, remove the words “or practice as a dentist within a designated state facility after the words “loan repayment obligation”. With amendment one above, the definition of “dental practice” now reads: “Dental practice” means the practice of dentistry by a recipient in general or specialty dentistry in a location within Virginia that is designated as a dental underserved area to be fulfillment of the recipient’s scholarship or loan repayment obligation”.
3. On page one, in 12VAC5-520-10, between the definitions for “Dental practice” and “Dental underserved area”, insert a new definition for “dental student” which reads: “Dental student” means an individual who is studying the practice of general or specialty dentistry”.
4. On page one, in 12VAC5-520-10, between the definitions for “Dentist loan repayment program” and “Designated state facility”, insert a new definition for “department” which reads: “Department” means Virginia Department of Health”.
5. On page one, in 12VAC5-520-10, in the definition of “Full-time dental practice”, insert the words “for 48 weeks per year” between the words “hours per week” and “excluding those exceptions”.
6. On page two, in 12VAC5-520-10, in the definition of “Recipient”, insert the words “Participant or” at the beginning of the definition.
7. On page three, in 12VAC5-520-130, change the name of the title of the subsection to “Eligibility for scholarships and loan repayment awards” from the current title of “Eligible applicants”.
8. On page four, in 12VAC5-520-130 A 2, remove the words “full time” from the end of the subsection so that the sentence ends with the words “School of Dentistry”.
9. On page five, remove the entire subsection 12VAC5-520-140.
10. On page five, in 12VAC5-520-150, change the name of the title of the subsection to “Number of applications per student, amount of scholarships and selection criteria” from the current title of “Distribution of scholarships and loan repayment awards”.

11. On page five, between 12VAC5-520-150 and 12VAC5-520-160, insert a new subsection 12VAC5-520-155 which reads:

12VAC5-520-155. How to apply.

Eligible applicants shall submit a complete application made available by the department on the department's website. A complete application shall include documentation of all eligibility requirements. The deadline for submission of the application shall be announced by the department on the department's website.

12. On page five, in 12VAC5-520-160, change the name of the title of the subsection to "Conditions of scholarships and contractual practice obligation" from the current title of "Contractual practice obligation".

13. On page seven, in 12VAC5-520-160 H, remove the first sentence of the subsection: "The recipient may be absent from the place of approved practice for a total of four weeks in each 12-month period for personal reasons". The first sentence of the subsection now begins "Absence for a period in excess of four weeks. . . ."

14. On page 10, in 12VAC5-520-195 A, insert the words "plus applicable interest" after the words "funds owed" and before the words "shall be reduced by".

15. On page 11, create a new subsection 12VAC5-520-205 using the words currently located in 12VAC5-520-200 C. The new subsection will be entitled "Fulfillment after default payments" and will read as follows:

12VAC5-520-205. Fulfillment after default payments.

In the event that a recipient, in accordance with the terms of the contract, fully repays the Commonwealth for part or all of any scholarship or loan repayment because of breach of contract and later fulfills the terms of the contract after repayment, the Commonwealth shall reimburse the award amount repaid by the recipient minus applicable interest and fees.

16. On page 11, in 12VAC5-520-210 A 2, replace the words "practice requirements" with the words "contractual practice obligation" between the words "verify the compliance with the" and "of the scholarship or loan repayment".

Ms. Brosche stated that she had talked with Dr. Miller about the proposed amendments she is offering and that Dr. Miller supports them. There was a discussion that currently VCU is the only accredited school of dentistry in Virginia; that the removal of the words "designated state facility" in the definition of dental practice is due to redundancy; the inclusion of the definition of VDH is for consistency with other scholarship regulations; that the program has not been funded since 2006; that VCU's role in the process consists of submitting a list of names of eligible students to VDH, and that those students are required to submit an application to VDH if they choose to apply. Mr. Edwards called for a vote on this motion to amend the proposed regulations as presented by VDH. The motion passed unanimously by a voice vote.

Ms. Brosche made a motion to add the words “with a cumulative GPA of at least 3.0 and” after the words “in good standing and” and before the words “attend the Virginia Commonwealth University” in 12VAC5-520-130 A 2 on page four. Ms. Prichard seconded the motion. Mr. Edwards called for a vote on this motion to amend the proposed regulations as presented by VDH. The motion passed unanimously by a voice vote.

There was a discussion about adding a new section to the regulations that would pertain to a dental scholarship and loan committee. Ms. Brosche told the Board that Dr. Miller, who was not in attendance at the meeting, felt very strongly about having a section added for this purpose. The discussion covered the fact that since only students from VCU are eligible to apply for the scholarship, it is difficult to see what the role of such a committee would be; that other scholarships have different schools and localities but there is currently only one dental school; that this section would add bureaucracy; and the thought that this wording may help in providing funds for the program. After the discussion ended, Ms. Brosche indicated that she would not be making a formal motion to add a subsection for a dental scholarship and loan committee.

Ms. Getter made a motion to reinsert the definition of “restitution” in 12VAC5-520-10 on page two. Ms. Brosche seconded the motion. There was a discussion that this definition is needed in the regulations because restitution in this instance is required by Code to be three times the award received; thus is different from the usual meaning of the word. Mr. Edwards called for a vote on this motion to amend the proposed regulations as presented by VDH. The motion passed unanimously by a voice vote.

There being no further discussion, Mr. Edwards called for a vote on the main motion to approve the proposed amendments as amended during the foregoing discussions. The proposed amendments were approved unanimously by a voice vote.

#### *Virginia’s Rules and Regulations Governing Cooperative Agreements (12VAC5-221) – Fast Track Regulations*

Mr. Bodin presented the fast track regulations. Emergency regulations for cooperative agreements went into effect on January 18, 2016. The emergency regulations will expire on July 17, 2017. The fast track regulations will become the permanent regulations for cooperative agreements. The fast track regulations contain provisions pertaining to definitions, a fee schedule, procedures for the Commissioner's request for information, the Commissioner's review, ongoing monitoring, and annual reporting. There has been one change to the fast track regulations from the emergency regulations; in 12VAC5-221-20, specifically, the definition of “days” has been clarified to show it means calendar days. Mr. Bodin told the Board that VDH has received an application for a letter authorizing cooperative agreement and is in the process of reviewing it under the current emergency regulations. Ms. Whipple moved that the fast track regulations be approved with Dr. Klein seconding the motion.

Mr. Edwards reminded the Board of the email that was sent prior to the meeting that contained two amendments from Ms. Brosche. Mr. Edwards asked if the Board was comfortable with Ms. Brosche making one motion to incorporate all of the changes in the areas outlined in her

document. Hearing no dissent, Ms. Brosche then made a motion that the two amendments sent to the Board prior to the meeting be approved. Ms. Getter seconded the motion. The two amendments are as follows:

1. On page three, in 12VAC5-221-20, insert the words “employee benefits” after the words “management of health services” and before the words “or any combined sharing”.
2. On page three, in 12VAC5-221-70 B 1 F, insert the words ‘retirement, benefits’ after the words “employment, wage levels” and before the words “recruitment, and retention”.

There was a discussion that on the first amendment, the insertion of the words “employee benefits” is in a part of the section that refers to the community and might better fit in another line of the section that refers to personnel. Ms. Brosche explained that her rationale is that it should be clear in the definition that in the case of a separation of a cooperative agreement, that the employee benefits, including retirement benefits would be addressed. Ms. Brosche amended her motion so that the words “employee benefits” would be inserted after the words “referral of patients, personnel” and before the words “instructional programs, support services”. Mr. Edwards then called for a vote on this motion to amend the final regulations as presented by VDH. The motion passed unanimously by a voice vote.

There was further discussion that the opening sentence of the regulations specifically refers to the Southwest Virginia area but the tone suggests it could be anywhere in Virginia. Ms. Tysinger advised the Board that the Code of Virginia specifies Southwest Virginia only.

There being no further discussion, Mr. Edwards called for a vote on the main motion to approve the fast track regulations as amended during the foregoing discussions. The fast track regulations were approved unanimously by a voice vote.

#### Nominating Committee

Mr. Edwards told the Board that the nominating committee will recommend a slate of Board officers for election at the June 1, 2017 Board meeting.

Mr. Edwards recommended five individuals to serve on the nominating committee: Ms. Whipple (who would serve as chair), Mr. East, Dr. Miller, Dr. Shuler, and Ms. Swartz. Ms. Whipple indicated that she would not be able to serve as chair as she will be out of the country immediately prior to the June 2017 meeting. Mr. Edwards then recommended that Mr. East be appointed as chair of the nominating committee. The five-member nominating committee was approved by unanimous consent.

#### Member Reports

*Hank Kuhlman – Consumer Representative.* No report

*Dr. Wendy Klein – Medical Society of Virginia (MSV).* She told the Board that MSV is partnering with VDH on legislation that was passed during the 2017 General Assembly session dealing with opioids. She also told the Board about other notable items from the 2017 General Assembly session: legislation concerning certificate of public need; legislation dealing with US medical graduates and international medical graduates; direct primary care; telemedicine reform; new level for physician assistant; and legislation that would require a reason for why a medication is prescribed to be included on the prescription.

*Jim Edmondson – Corporate Purchaser of Health Care.* He told the Board that he recently attended a presentation given by a woman who represents victims of human trafficking. He indicated that he was staggered by the number of victims of this practice and that although this has not yet risen to the point of being a public health issue, it might grow to be a public health issue. He wanted to bring the issue to the Board's attention.

*Dr. Holly Puritz – Medical Society of Virginia (MSV).* No report but to echo the comments from Mr. Edmondson. She told the Board that there are VCU staff that are very involved in this issue. Dr. Levine commented that this issue is one that VDH is aware of and is monitoring. She went on to say that VDH does not have good data on how big this issue is. Ms. Whipple commented that there is information about this issue on the Attorney General's website.

*Linda Hines – Managed Care Health Insurance Plans.* She told the Board that the Department of Medical Assistant Services Addiction and Recovery Treatment Services (ARTS) program will go live the first of April and that the peer recovery portion of the program will start in July. This program has been very collaborative across state agencies. From a managed care perspective, keeping a close eye on the replacement program for the Affordable Care Act. Changes to this program will have far reaching effects and will impact Medicaid.

*Faye Prichard – Local Government.* No report.

*Brad Beall – Consumer Representative.* No report.

*Stacey Swartz – Virginia Pharmacists Association (VPA).* She told the Board that education is continuing for pharmacists on the standing order for naloxone, including new prescribing practices to ensure that pharmacists are aware of everything that is happening with regard to the standing order.

*Megan Getter – Public Environmental Health Representative.* She told the Board about the Creating a Sustainable Future in Public Health conference to be held by the Virginia Public Health Association (VAPHA) on April 21. This conference focuses on students enrolled in VAPHA affiliate programs. She also told the Board about a new information resource that the Virginia Environmental Health Association is sharing: a new website entitled "A Common Wealth of Public Health and Primary Care Information" found at [www.vapublichealthinfo.org](http://www.vapublichealthinfo.org). This website shares access to free evidence-based information in the form of journal articles, books, reports, and links to other information databases specific for Virginia that can be useful to public health and environmental health practitioners across the Commonwealth. She also shared

with the Board about the Patrick Henry Family Services' Safe Families for Children program. This program provides support by providing a safe, temporary environment for children whose families are in temporary crisis, giving the family time to get back on their feet.

*Mary Margaret Whipple – Hospital Industry.* She told the Board that every hospital emergency department has procedures in place to help deal with the opioid crisis; including a policy not to give a prescription for pain medication for more than three days. She also told the Board that the Virginia Hospital and Healthcare Association is analyzing changes to the Affordable Care Act and what effects those changes will have on hospitals and patients.

*Theresa Brosche – Virginia Nurses Association (VNA).* She told the Board that the VNA will be holding the Nursing Ethics and Moral Distress conference in Richmond on April 25. She also told the Board that she has had the opportunity to discuss Virginia's Plan for Well-Being with high school students; to share the VaAware website (dealing with addiction, prevention, and recovery resources) with college faculty; and to assist her local health district with the community health assessment initiative. She told the Board that through her interactions with individuals in each of these areas, she has found great interest and willingness for the public to assist to promote a culture of health.

*Bruce Edwards – Emergency Medical Services (EMS) Representative.* – No report.

### Adjourn

The meeting adjourned at approximately 3:30 p.m.

## Appendix A

Proposed amendments to October 24, 2016 Board of Health meeting minutes – Brad Beall

### 2. Page 8 – First full paragraph

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 and facts developed at the district court trial. Mr. Beall said that since the law and regulations in Virginia are different, should some of the facts change, a different judicial result might occur in Virginia. He said that the other than the construction standards referenced, the other four recommended amendments represented an unwarranted leap of faith not mandated by Hellerstedt, as the OAG’s memo offered no specific reasoning for the additional four amendments other than to say that “we have identified provisions that we believe may be constitutionally suspect and should be eliminated or revised.” ~~the regulatory provisions may be unconstitutional.~~ He told the Board that the amendments should not be adopted without following the APA as they are not “required by Hellerstedt” as suggested by the OAG memo. Mr. Beall stated that no abortion facilities in Virginia have closed solely as a result of the regulations currently in effect. Mr. Beall then stated that the second OAG memo advised the Board that it was within the Board’s discretion to adopt these amendments which he stated was contrary to the APA. Section 2.2-4006 subparagraph 4.b. only exempts regulations from the APA “if required by order of any state or federal court of competent jurisdiction where no agency discretion is involved” and we do not have any such order. 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.

### 3. Page 9 – Second full paragraph

Mr. Beall asked what effect this proposed amendment would have on VDH’s ability to suspend the license of a clinic such as Virginia Health Group. Dr. Levine responded that we can suspend a license based upon the language in 412-130 “or any other applicable regulation” ~~there would still remain other sections of the regulations,~~ and ~~in~~ the Code of Virginia, which that would provide VDH with authority to suspend the license given the conditions that were found ~~upon~~ in the inspection of Virginia Health Group.

4. Page 11 – First full paragraph

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,”<sup>2</sup> 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 in the June 2015 meeting, Mr. Bodin informed the Board that infection prevention deficiencies were the most severe and most common found in inspections. Mr. Beall stated that it was a primary finding of the now-suspended Virginia Health Group. He also said that the CDC Guide stated it was applicable in “all healthcare settings.” 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.

5. Page 16 – First full paragraph

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 added~~ [adding wording a new requirement](#) to the final amendments and is [therefore](#) 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.

## Appendix B

### Proposed amendments to October 24, 2016 Board of Health meeting minutes – Megan Getter

pg. 6, 4<sup>th</sup> paragraph, 5<sup>th</sup> sentence

Ms. Getter stated that according to FGI specialists, VDH's recommended amendment to section 370 causes section 30 to be necessary because absent specific information in the regulations, building code specialists and architects are not aware of the requirement classification, that there is no guidance in the regulations, and all sections referring back to the Code of Virginia are being removed.

Pg.11, 3<sup>rd</sup> paragraph, 3<sup>rd</sup> sentence

There was also discussion concerning alignment of abortion regulations with hospital regulations, how all hospital accreditation is done by rigorous independent authorities outside VDH, and how such accreditation is voluntary not mandatory. Ms. Getter told the Board that the National Abortion Federation's 2016 Clinical Policy Guidelines reference the CDC's Guide to Infection Prevention in its "Infection Prevention and Control" section.

Pg. 13, 2<sup>nd</sup> paragraph, 4<sup>th</sup> sentence

~~There was a discussion that this language in the regulation alerts providers to the statutory requirement for notarization.~~ Ms. Getter told the Board that the original reason for including this amendment was based on a recommendation by the OLC. OLC had found that facilities were failing to notarize parental consent which is a requirement by law, and noted that there is no mention of this statutory requirement in the regulations. The Board unanimously agreed to include this amendment at the September 2015 Board meeting.

Pg. 13, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> sentence

She told the Board that the National Abortion Federation and the American Psychological Association believe this counseling is medically necessary and that abortion providers know what type of counseling is required; that the National Abortion Federation has determined post-abortion counseling to be a medical standard in which deviations are rare and difficult to justify.

Pg. 16, 3<sup>rd</sup> paragraph, 2<sup>nd</sup> sentence

Ms. Getter told the Board that OLC cites only one incident has been reported to VDH by a facility pursuant to this section; there is confusion regarding what constitutes reportable events since OLC regularly finds reportable events in their inspections, and pg. 46 of public comment shows Rose Codding, director of Falls Church Healthcare Center, requested clarification of events listed in 12VAC5-412-320.B.2; the list of complications is taken directly from the National Abortion Federation's 2016 Clinical Policy Guidelines. 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 abortion facilities say their complication rate is low, it appears that there are zero ~~no~~ complications based on current reporting practices ~~inspection reports~~.

Pg. 17, 3<sup>rd</sup> paragraph, 5<sup>th</sup> sentence

~~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). Ms. Getter then asked why section 370 was completely removed in response to Hellerstedt, when the proposed amendments from September 2015 only reference section 3.7 of the FGI Guidelines titled, "Specific Requirements for Office-Based Procedure and Operating Rooms."~~