

**State Board of Health
Minutes
December 14, 2012 – 9:00 a.m.
Perimeter Center, 9960 Mayland Drive
Richmond, Virginia 23233**

Members present: Bruce Edwards, Chair; Paul Clements; Kay Curling; Eric Deaton; Jim Edmondson; Dr. Steven Escobar; Dr. Charles Johnson; Dr. Bennie Marshall; Dr. Mary McCluskey; Dr. John Seeds; Dr. Cathy Slusher; and Amy Vest.

Members absent: Dr. John deTriquet; Dr. Anna Jeng; and Gail Taylor.

VDH staff present: Dr. Maureen Dempsey, Acting State Health Commissioner; Dr. Marissa Levine, Acting Chief Deputy for Public Health; Bob Hicks, Deputy Commissioner for Community Health Services; Joan Martin, Deputy Commissioner for Administration; Joe Hilbert, Director of Governmental and Regulatory Affairs; Catherine West, Administrative Assistant; Susan Horn, Research Assistant; Josh Czarda, Performance Improvement Manager; Peter Boswell, Director of the Division of Certificate of Public Need; Dr. David Trump; Acting Director, Office of Family Health Services and Director, Office of Epidemiology; Nicole Poulin, Office of Family Services; Julie McMorrow, Office of Emergency Preparedness; and Mike Welling, Division of Radiological Health.

Others Present: Allyson Tysinger, Robin Kurz, and Ishneila Moore, Office of the Attorney General; Dr. John Agola, Co-Chair, Virginia Stroke Systems Task Force.

Call to Order

Mr. Edwards called the meeting to order at 9:00 a.m. Mr. Clements led those in attendance in the pledge of allegiance. Following introductions, Mr. Hilbert reviewed the agenda and the items contained in the Board's notebooks. Mr. Edwards made a motion to add a proposed resolution of commendation for former State Health Commissioner Dr. Karen Remley to the agenda. The agenda was approved by unanimous consent.

Approval of Minutes

A motion was made and seconded to approve the draft minutes of the September 14, 2012 Board meeting. Mr. Clements noted that on page 15, the word "narcotics" should be "antipsychotics." The corrected minutes were approved by unanimous consent.

Commissioner's Report

Dr. Dempsey introduced VDH's two "agency stars" for the meeting: Mike Welling with the Division of Radiological Health and Julie McMorrow with the Office of Emergency Preparedness.

Dr. Dempsey provided the Commissioner's report to the Board. Dr. Dempsey briefed the Board on VDH's preparations for and response to Hurricane Sandy. Dr. Dempsey noted that the preparedness and response activities conducted by the Commonwealth and VDH were impressive. Dr. Marshall applauded the Commonwealth's preparedness efforts however she noted the need for more collaboration regarding traffic because residents of the Hampton Roads area would not be able to evacuate safely had the storm been more severe. Dr. Levine stated that VDH recently was a participant in a survey looking at catastrophic issues and evacuating long term care facilities, and engaged in a similar conversation regarding planning for maximum precipitation events. Dr. Levine stated she believes the Commonwealth is better prepared than it has been in the past but VDH will place additional effort in catastrophic planning. Mr. Clements asked whether catastrophic planning efforts include nursing homes or assisted living facilities. Dr. Levine stated the survey focused specifically around nursing facilities since VDH does not regulate assisted living facilities. However, VDH is working with the Department of Social Services so that they can have the same types of processes in place that VDH uses for nursing facilities.

Dr. Dempsey then briefed the Board on the activities of the Governor's Uranium Working Group (UWG), which consisted of staff from VDH, the Department of Environmental Quality, and the Department of Mines Minerals and Energy and. The UWG provided its final report to the Governor on November 30 and held its final public meeting on December 11. The UWG is currently conducting an additional study looking at the economic impacts if ban lifted, particularly in communities close to where mining would occur. The UWG anticipates reporting the results of that study to the Governor by January 15, 2013.

Dr. Dempsey then briefed the Board on VDH's response to an outbreak of fungal meningitis in southwest Virginia. VDH was notified by CDC on September 29 concerning cases of fungal meningitis. The CDC identified two facilities in Virginia that received injectable drugs linked to the outbreak. VDH played a coordinating role between doctors and CDC. VDH worked with the CDC and the two health care facilities to identify patients who were exposed to the injectable drugs in question, and aided in ongoing monitoring. VDH issued a clinicians' letter to ensure clinicians were aware of the situation. In all, there were 51 cases of fungal meningitis and two deaths in Virginia.

There was a discussion concerning the ultimate disposition of the compounding pharmacy in Massachusetts where the tainted drugs originated. The pharmacy was licensed in Massachusetts. The pharmacy's permit was rescinded in Massachusetts. The Virginia Board of Pharmacy has rescinded the pharmacy's permit in Virginia as well. Dr. Dempsey stated the center was not part of VDH's investigation and response. The U.S. Food and Drug Administration investigated the compounding pharmacy. Dr. Trump noted there is a meeting next week sponsored by the federal government regarding compounding pharmacies. VDH will be participating in that meeting along with the Board of Pharmacy.

Abortion Facility Licensure Status Report

Dr. Levine provided the Board with this update. Facility licensure surveys occurred between May 1 and early August. All 20 facilities are licensed at this time. Eighteen of the facilities had

issues related to either clean/dirty storage spaces, lack of appropriate air flow, and an entrance for handicapped accessibility. More than 15 had issues with either design and construction or infection prevention policies and procedures. There were also some medication and equipment issues. The most common finding was that facilities did not have procedures for background investigations. All of these facilities were required to submit a plan of correction and were subsequently issued a license.

With respect to building design and construction requirements, the facilities have two years from the date of their initial licensure to come into compliance with those requirements. Dr. Levine told the Board that one of the facilities is already in full compliance with building design and construction requirements of the regulations. Eleven of the facilities have indicated to VDH that they plan to renovate in order to come into compliance with the design and construction requirements; two may relocate; and six facilities have indicated to VDH that they are still considering their options, which may include requesting a variance to the regulatory requirements from VDH. Dr. Levine told the Board that VDH has not received any variance requests at this time. VDH has received 22 complaints against abortion facilities. Based on VDH's investigation of each complaint, only one of these has been substantiated; however, VDH determined that the substantiated complaint does not affect the facility's ongoing practice.

Mr. Edmondson read from a prepared statement and requested that his statement be included in the minutes for the meeting: "Mr. Chairman, I thank Dr. Levine for her presentation. I would point out that the inspections of the first-trimester abortion clinics have not borne out that the clinics operate under dangerous conditions in their physical facilities. In fact, the mostly minor problems that have been identified are similar to problems found on the inspection of other regulated facilities. They have been easily addressed. The clinics' safety records continue to be excellent. Nothing at this early stage of regulation would suggest that grandfathering the clinics' physical plants – that is, not requiring them immediately to meet regulatory guidelines for new facilities – would have been detrimental to women's health in the Commonwealth. Our observation that action related to these clinics was a solution in search of a problem remains true."

Overview of Sexual Violence Prevention Activities

Dr. Trump introduced Ms. Poulin who provided an overview to the Board. The 1994 federal Violence Against Women Act recognized that sexual violence is a public health issue. The Act focuses on sexual violence prevention, and established the Rape Prevention and Education program at CDC. Major aspects of the program are to identify risk factors and look at increasing protective factors. The primary focus of the program is prevention instead of reaction to incidence. The program collects information, derived from surveys, concerning sexual violence. Information obtained from these surveys indicates the rate of sexual violence in Virginia is somewhat lower than the national rate. However, VDH suspects that actual rates are higher than what is reported.

There was a discussion concerning VDH's efforts to partner with faith-based organizations, and concerning the types of public awareness activities that the program has conducted. There was additional discussion concerning socioeconomic or ethnic disparities. Ms. Poulin stated that sexual

violence affects all economic and ethnic groups. However, there is a high percentage of incidences under the age of 25. Mr. Edmondson asked if there are language barriers associated with the program curriculum. Ms. Poulin stated that there is not enough funding to meet the need to translate the curriculum into a number of different languages; however, community-based partners help with meeting the needs within their communities.

Dr. Johnson suggested the program work with prisons, as victims of sexual violence within the prison population do not usually come forward, and lack some of the resources that other victims of sexual violence may have access to. Ms. Poulin stated there has been some work conducted with prisons for aid in prevention. Dr. Slusher noted that there are number of events that occur in families that go unreported or discussed. Ms. Poulin noted this is an area that has just started to be discussed.

Recognition for Former State Health Commissioner Dr. Karen Remley

Mr. Edwards asked if the Board members had had an opportunity to review the draft resolution recognizing Dr. Karen Remley, former State Health Commissioner. There were no suggested changes to the draft document. Mr. Deaton moved that the Board present the resolution to Dr. Remley during the lunch presentation period of the meeting. The motion was seconded. This motion was approved unanimously.

Strategic Plan Overview

Ms. Martin provided an update to the Board. In 2011, VDH significantly revised its strategic plan, including the agency performance measures included within the plan. The strategic plan contains 13 agency goals, and is organized around 41 service areas. VDH's strategic plan is linked to the priorities and objectives of the Administration. Mr. Deaton asked for a quarterly update on VDH goals. Ms. Martin stated that VDH can provide the board with that information to the extent it is available on a quarterly basis, but explained that some measures are only reported on an annual basis. Mr. Edmondson noted that there was nothing in the strategic plan specific to health care associated infections. Dr. Levine stated collecting this information is an ongoing effort of VDH, and that a process is in place between the Office of Epidemiology and the Office of Licensure and Certification to look at this issue. Mr. Deaton told the Board that the Centers for Medicare & Medicaid Services tracks this information and VDH tracks it as well. Mr. Edmondson stated this ought to be public information. Mr. Deaton noted the information is available on the CMS website. Mr. Edmondson stated that VDH should find a way to distribute the information even if it is not a direct agency responsibility. Mr. Edwards asked that VDH provide an overview regarding this information at the next meeting.

Performance Improvement Overview

Mr. Czarda gave an update on the performance improvement project, including the following topics:

- Dashboard system to monitor key measures of strategic plan.
- Strategies for reducing VITA expenses.
- Automation of the request for procurement process.

- Plan First enrollment.
- Streamlined process to remove system access for employees who have left VDH.
- VDH services that are billable to Medicaid.

Mr. Edmondson noted that the claims denial rate for the Plan First program is very surprising, and noted he would like to hear more about what VDH will do about this issue. Mr. Czarda noted that the issue is complex , and told the Board that he would provide a further update at the next meeting.

Update on Electronic Meeting Provisions of the Freedom of Information Act (FOIA)

Mr. Hilbert provided this update. In 2010, the Board had discussions about the ability of the Board to conduct an electronic meeting, and the ability of Board members to participate in the meeting remotely via conference call or some other electronic means. Following that discussion, the Board sent a letter to Governor McDonnell, requesting that his government restructuring and reform commission review this topic. Mr. Hilbert told the Board that the commission has issued its final report, but that the report does not address any issues specific to FOIA. Mr. Hilbert explained that the Code of Virginia allows the Board to hold an electronic meeting with two caveats: a quorum must be physically present in one location and the remote locations have to be noticed as a meeting site that is open to the public.

Mr. Hilbert presented the Board with a new draft letter to the Governor, which states in part that “the Board of Health would favor a further review of VFOIA in order to assess the need for additional, appropriate revisions that would expand the opportunity for members of public bodies to participate in public meetings through remote or electronic means.”

Mr. Hilbert noted that any change to FOIA would require legislative approval. Mr. Edmondson noted that last year the Commissioner met with Board members, and due to the rules related to FOIA, those meetings had to be individual. He asked is there anything we can do to simplify the process if similar meetings are needed in the future, and is that the purpose of the drafted letter. Mr. Hilbert clarified that no, that was another issue due to the definition of a public meeting which states any meeting where three members of a public body assemble constitutes a public meeting. Dr. Seeds noted a quorum of the board should be eight members. Mr. Edwards noted that quorum of the board is established in the Code of Virginia as six members; however, as membership has grown this has become inaccurate. Mr. Hilbert noted VDH could make a request to amend the Code. Mr. Edwards suggested striking the numerical element from Code and running the Board according to Roberts Rules in case membership increases or decreases. Mr. Hilbert noted that the Board was last expanded in 2009. In the time he has staffed, quorum has never been an issue. After discussion it was decided by unanimous consent that the letter from the Board would be transmitted to the Governor.

Lunch Presentation

Mr. Edwards recognized Dr. Remley by reading and then presenting to her a resolution of commendation adopted by the Board. The resolution expressed the Board’s gratitude for Dr. Remley’s service to the Commonwealth as Commissioner of Health from 2008 to 2012.

Mr. Edwards introduced Dr. John Agola, Co-Chair of the Virginia Stroke Systems Task Force. Dr. Agola then introduced three of his colleagues who would also be participating in the presentation, Dr. Nina Salinski, Dr. Diane Hillman, and Dr. Sidney Mallenbaum.

Dr. Agola and his colleagues briefed the board concerning the different types of stroke, as well as incidence, prevalence and treatment. The group explained that when the task force started, there were nine primary stroke centers within the Commonwealth, since then that number has increased to 34. Task force efforts are now focused on prevention and rehabilitation. There was a brief discussion concerning the role of urgent care centers and EMS providers in stroke treatment.

Mr. Edwards noted that one of the symptoms of stroke is denial, and there needs to be more education regarding this symptom. There was a brief discussion concerning the ability of a hospital to serve as a stroke center and utilize telemedicine to serve rural health areas.

Matrix of Pending Regulatory Actions

Mr. Hilbert reviewed the summary of all 25 pending VDH regulatory actions. Since the September 2012 meeting, there have not been any regulatory actions that the Commissioner approved on the Board's behalf while the Board was not in session.

Public Comment

There were no comments from any member of the public.

Regulatory Action Items

Certificate of Public Need Regulations (12VAC5-220) – Final Amendments, Fast Track Action
State Medical Facilities Plan (12VAC5-230) – Final Amendments, Fast Track Action

Mr. Boswell presented the final amendments to 12VAC5-220 and 12VAC5-230. There was a discussion in which it was noted these amendments do not affect applications for additional services in regions, or physicians seeking imaging equipment. Dr. McCluskey moved that the final amendments to 12VAC5-220 be approved; this motion was seconded by Mr. Deaton. The amendments to 12VAC5-220 were approved unanimously by a voice vote. Mr. Edmondson moved that the final amendments to 12VAC5-230 be approved; this motion was seconded by Dr. McCluskey. The amendments to 12VAC5-230 were approved unanimously by a voice vote.

Proposed Revisions to the 2013 Board of Health Meeting Schedule

Mr. Hilbert advised the Board that boardroom 2 at the Perimeter Center is not available for the September 19, 2013 meeting. Consequently, he recommended that the Board move the date of its September meeting to September 12, 2013, when boardroom 2 will be available. The Board approved this change to the meeting schedule by unanimous consent.

Member Reports

Dr. Mary McCluskey – Managed Care Health Insurance Plans. She informed the Board that WellPoint is in the process of acquiring AmeriGroup and hopefully the acquisition will be completed by the end of 2012. WellPoint is involved with dual eligible integrations that will go live in California in 2013. She told the Board that WellPoint is continuing to track issues pertaining to health benefit exchanges on both federal and state levels.

Dr. Steven Escobar – Virginia Veterinary Medical Association. No report.

Eric Deaton – Hospital Industry. No report.

Amy Vest – Virginia Pharmacists Association. Ms. Vest informed the Board that pharmacists are vaccinating Virginians against the flu and that the vaccine supply is getting low. Ms. Vest also told the Board that pharmacists are helping senior citizens re-enroll in Medicare. She informed the Board about the Board of Pharmacy's proposed regulations pertaining to working conditions for pharmacists. There was a brief discussion concerning the forecast for the severity of this year's flu season. Ms. Vest indicated that there has been a good response to vaccination and that there has been an increase in early vaccination this year.

Bruce Edwards – Emergency Medical Services Representative. Mr. Edwards updated the Board concerning his service as a member of the State EMS Advisory Board.

Paul Clements – Nursing Home Industry Representative. Mr. Clements noted that the upcoming 2013 General Assembly Session poses interesting challenges to the nursing home industry. Long term care facilities continue to work with hospitals concerning a 30 day readmission process; it is a work in progress. The VDH Office of Licensure and Certification has provided documentation concerning best practices for preparedness in case of loss of electricity. He also discussed dementia care and how it is addressed in the long term care setting

Jim Edmondson – Consumer Representative. Mr. Edmondson continues to be involved with VDH's Healthcare-Associated Infections Advisory Committee and issues surrounding healthcare-associated infections. He told the Board that the committee has a newsletter that is widely distributed, and has had a positive impact on addressing the problem. He stated there has been misinformation in the press concerning where Virginia stands with respect to implementation of a health benefit exchange. Mr. Edmondson requested an update concerning the health benefit exchange at a future meeting

Dr. Bennie Marshall – Virginia Nurses Association. Dr. Marshall informed the Board that the VNA continues to be involved with the Virginia Action Coalition and its work to implement the recommendations of the Institute of Medicine report. The recommendations include preferential hiring in hospitals for nurses with a BS degree, the need for more RNs educated at a higher level for patient care in hospitals, and increasing the number of nurses that are present during decision making events.

Dr. Charles Johnson – Virginia Dental Association. Dr. Johnson told the Board about the new dental school in Bluefield College and the use of local clinics in Bluefield and Tazewell. The first class is planned for 2015.

Dr. Catherine Slusher – Medical Society of Virginia. Dr. Slusher informed the Board that MSV held its annual conference in November. MSV reaffirmed an emphasis on HIV and AIDS; including an increase in awareness, screening, keeping treatment local, and identifying pediatric and teenage patients.

Dr. John Seeds – Medical Society of Virginia. Dr. Seeds discussed the projected shortage of physicians. Dr. Seeds told the Board that medical schools are gearing up to increase enrollment, but that action will not fix the estimated 12,000 shortfall by 2020. It is important to note that although medical schools have increased enrollment, the size of residency programs has not increased.

Kay Curling – Corporate Purchaser of Health Care. Ms. Curling stated that corporations have recently completed their open enrollment period for health insurance coverage. She noted that today is the deadline for states to declare whether or not they are going to operate their own state health benefit exchange. She also updated the Board on various issues pertaining to implementation of the Affordable Care Act.

Other Business

Mr. Hilbert briefed the Board concerning the Board's public participation policy. The Board's current policy was adopted in 2003, and Mr. Hilbert said that it was appropriate to revisit the policy at this time in order to consider some potential revisions. Mr. Hilbert provided the Board with a draft revised policy and discussed the proposed revisions. He explained that the primary objective of the proposed revisions is to make the policy consistent with existing regulations which establish public participation guidelines for VDH (12VAC5-11), so that the Board can be compliant with the guidelines. Mr. Hilbert indicated that item 1 of Section A, Public Comments at Board of Health Meetings, is not consistent with the current regulation so it should be deleted. Under Section B, Public Comment Submitted to the Board of Health Outside of Board of Health Meetings, Mr. Hilbert recommended that language be added in order to make the provision for accepting public comment consistent with the regulations. For public participation purposes, VDH and the Board are considered one entity for comments submitted to either VDH or to the Board of Health.

There was a discussion about changing the limit of the public comment period to be open-ended rather than have a 20 minutes limit as stated in the current policy. After further discussion, the Board decided to retain the 20 minute limit in the policy. There was additional discussion about comments the Board has received recently and how they should be handled. Mr. Hilbert explained that there is language in the proposed policy revisions that addresses this concern. Finally, there was discussion about the guidelines and how they relate to Board members making comments to the public or to the media. Mr. Hilbert stated that this activity is not prohibited by the guidelines. Dr. Marshall stated that comments made by individual members should clearly

indicate that they are personal opinion and not the opinion of the Board. Dr. Escobar moved that the proposed changes to the guidelines be adopted. Dr. McCluskey seconded the motion. The changes were approved unanimously by a voice vote.

Adjourn

The meeting adjourned at 2:34 p.m.