

**State Board of Health
Minutes
September 15, 2016 – 9:00 a.m.
Perimeter Center, 9960 Mayland Drive
Richmond, Virginia 23233**

Members present: Bruce Edwards, Chair; Brad Beall; Theresa Brosche; Tommy East; 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: Benita Miller, DDS

VDH staff present: Dr. Marissa Levine, State Health Commissioner; Richard Corrigan, Deputy Commissioner for Administration; Dr. Hughes Melton, Chief Deputy Commissioner; Dr. Lilian Peake, Deputy Commissioner for Population Health; Joe Hilbert, Director of Governmental and Regulatory Affairs; John Ringer, Director of Public Health Planning and Evaluation; Cathy Peppers, Administrative Assistant; Catherine West, Administrative Assistant; Maribeth Brewster, Risk Communications Manager, Office of Risk Communication and Education; Lauren Cunningham, Public Relations Coordinator, Office of Risk Communication and Education; Matt LiPani, Public Information Officer, Office of Risk Communication and Education; Erik Bodin, Director, Office of Licensure and Certification; Dr. Laurie Forlano, Director, Office of Epidemiology; Lance Gregory, Environmental Health Coordinator, Office of Environmental Health Services; Jennifer Macdonald, Newborn Screening Program Manager, Office of Family Health Services; Alfonso Parker, Direct Service Associate, Norfolk Health District

Others Present: Cynthia Bailey, Office of the Attorney General

Call to Order

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

Welcome and Introductions

Mr. Edwards welcomed two new members to the Board, Dr. Puritz and Ms. Swartz. Following introductions, Mr. Edwards then welcomed the public to the meeting. Mr. Hilbert reviewed the agenda and the items contained in the Board's notebooks. Mr. Hilbert told the Board that based on action taken by the Virginia General Assembly's Joint Commission on Administrative Rules (JCAR) on September 14, VDH recommends that the Board defer action to a future meeting on the agenda item concerning the final amendments for the Regulations for the Licensure of Abortion Facilities (12VAC5-412). He also told the Board that based on comments and questions received from some Board of Health members as well as certain stakeholders, VDH recommends that the Board defer action to the December Board of Health meeting on the agenda

item concerning the fast track amendments for the Regulations for Alternative Onsite Sewage Systems (12VAC5-613). The Board approved both VDH recommendations by unanimous consent.

There was a discussion about scheduling a special Board meeting for the final amendments to the Regulations for the Licensure of Abortion Facilities. The discussion included talking about the desire to have all Board members present at a special called meeting of the Board; the availability of certain Board members with commitments they have already made; the need for time for the public to review and make comments, if any, to changes to the final amendments from the proposed amendments; the urgency to bring the existing regulations into compliance with the recent Supreme Court ruling in *Whole Woman's Health v. Hellerstedt*; and that the Board's practice is to defer an action to the next scheduled meeting so that a special meeting is not needed; 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. Whipple made a motion to schedule a special meeting of the Board of Health, to take action on the final amendments to the Regulations for the Licensure of Abortion Facilities, for some time between October 12 and 15. Before getting a second to the motion, Mr. Edwards suggested a discussion on logistics for where the meeting would be held. Mr. Hilbert told the Board that preliminary inquiries had been made for the availability of the Perimeter Center for the meeting location. That availability is conditioned on having both Board Room 1 and Board Room 2 available. Board Room 2 is available for October 26 and 27 but Board Room 1 is not; inquiries would need to be made to see if the event scheduled for Board Room 1 for those dates could be moved. Mr. Hilbert also indicated that VDH could inquire as to availability of the Perimeter Center for a Saturday meeting. There was a discussion for the need for Board members to check their calendars and that they be polled for their available times.

Ms. Whipple then withdrew her earlier motion and made a motion to schedule a special meeting of the Board of Health, to take action on the final amendments to the Regulations for the Licensure of Abortion Facilities, for some time between now and December 1, 2016. Mr. Kuhlman seconded the motion. Mr. Edwards called for a vote by show of hands on this motion. The motion was approved by a vote of nine for and four against (Mr. Edwards did not vote).

There was further discussion that the availability of the Perimeter Center to hold the meeting should not influence when the meeting will be scheduled; that the meeting should be scheduled based on when the members can attend; and that dates in late September should also be considered to scheduling a time for the meeting. Mr. Edwards moved that Mr. Hilbert poll the Board for their availability for the meeting and find a suitable location that will work with those dates. This motion was approved by unanimous consent. Ms. Getter expressed her extreme disappointment in rushing through the process of scheduling a special meeting.

Approval of Minutes

Ms. Getter told the Board that a correction needed to be made to a question she asked on page seven of the draft minutes for the Board's June 2, 2016 meeting. Ms. Getter indicated that in the first sentence of the second paragraph, the date of "2014" needed to be changed to "2015." The amended minutes were approved by unanimous consent.

Commissioner's Report

Dr. Levine provided the Commissioner's report to the Board. She began with the introduction of the "agency stars" for the meeting: Alfonso Parker with the Norfolk Health District and Ryland Roane with the Office of Epidemiology. Dr. Levine told the Board that Ryland Roane is the first VDH employee to be posthumously recognized as an agency star. Both of these employees have demonstrated exceptional commitment and dedication to VDH and to Virginia's public health system. After Dr. Levine shared the story of how Mr. Parker had assisted an individual by extinguishing the fire she experienced with her clothing, the Board recognized his heroic efforts with a standing ovation.

Dr. Levine then briefed the Board concerning the VDH strategic plan. The plan has received extensive input from VDH employees, and she told the Board that its feedback and insights are requested as well. Dr. Levine explained that the VDH mission statement has been slightly revised, and that its vision statement has been changed. In addition, five strategic agency goals have been established. Dr. Levine told the Board that VDH has applied for accreditation from the Public Health Accreditation Board, with the accreditation process expected to take 12 to 18 months. A site visit is expected as part of the accreditation process, which is expected to be intense and will likely include conversation with at least some Board members.

Next Dr. Levine provided an update on Zika. She reminded the Board that it is still mosquito season, and said that, to date, VDH has approved Zika testing for approximately 1,400 people in Virginia. All Zika cases in Virginia to date are related to travel, but local transmission of Zika in Virginia remains a possibility; therefore, it is important that VDH continues to get prevention messages out to the public through a variety of mechanisms. Dr. Levine said that it was likely Virginia would continue to see travel-associated Zika cases through the coming winter. There is also concern about what will happen in Virginia during the summer of 2017. VDH is continuing to conduct mosquito surveillance; so far Zika has not been found in any mosquitos in Virginia. There was a brief discussion concerning the amount of funding available to address Zika. Dr. Levine said that the U.S. Centers for Disease Control and Prevention (CDC) has identified areas where they can provide additional funding, and have provided some funding for testing. Dr. Levine said that where funding will be a concern is for mosquito control; some localities in Virginia have mosquito control capability but most do not. Dr. Levine told the Board that if Virginia were to experience local transmission of the Zika virus, it is anticipated that the Governor would declare an emergency, which would enable emergency funds to be used for mosquito control purposes. Dr. Levine also said that the lack of a congressional appropriation of funds for Zika response has had an impact, particularly in mosquito control planning. Dr. Levine commended the many VDH employees who have been working hard to respond to Zika. There was then a brief discussion of the aerial spraying of insecticide in South Carolina that led to the

killing of many honey bees. Dr. Levine said that Virginia will be taking an integrated approach to vector management, in which VDH will be working closely with the Virginia Department of Agriculture and Consumer Services, and with mosquito control vendors.

Next on the Commissioner's report was an update concerning response to the Hepatitis A outbreak that is believed to be related to smoothies made with strawberries that were purchased from Egypt. This outbreak has not been limited to Virginia, and as such has become a federal and international issue. The CDC and the U.S. Food and Drug Administration both have roles in the investigation and are working with the involved corporation. Dr. Levine reminded the Board that Virginia's food chain is very complex and international in scope. She said that is not something that Virginians normally think about or take into consideration when they eat out.

Dr. Levine then briefed the Board of Virginia's opioid addiction crisis. Emergency room (ER) visits due to heroin overdose have increased this year compared to last year. On any given day in Virginia, on average, about 26 people show up in an ER with drug overdose, three of which are for heroin, and three people die of drug overdoses. The VDH Office of the Chief Medical Examiner investigates these cases. Virginia is on pace to have over 1,100 deaths in 2016 due to drug overdose. There has been a lot of effort to clamp down on opioid prescribing. However, people that are addicted to prescription opioids look to other sources and often turn to heroin, which can be easily available. There are also synthetic forms of opioids, and people often do not know what they are getting and then overdose and die. VDH does not have a specific answer to this crisis, but is working with the Secretary of Health and Human Resources and other state agencies to address this as a public health issue.

There was a brief discussion on the use of naloxone to address opioid addiction. Dr. Levine said that many states have worked to make naloxone more readily available. In Virginia, it is available for use by EMS and police. If more Virginians can be trained in the administration of naloxone, it is possible that a statewide standing order for use of naloxone could be developed. There are cost issues, as naloxone is not a low cost medication.

Dr. Levine then provided the Board with an update concerning VDH's newborn screening program. She said that turnaround time on providing results obtained from dry blood spot testing has decreased. In addition, critical congenital heart disease diagnosis can now be made through the newborn screening program. Some newborns may have multiple birth defects. Dr. Levine also told the Board that there are approximately 100,000 births annually in Virginia, and that VDH is celebrating the 50th anniversary of the newborn screening program. Ms. Brosche expressed satisfaction at the low number of screening refusals and asked if VDH had information concerning the factors responsible for the low number of refusals. Dr. Levine said that VDH would compile responsive information and provide it to the Board by way of follow-up.

Dr. Levine then briefed the Board on the projected state revenue shortfall for FY17 and FY18. She told the Board that VDH had been directed by the Administration to submit a 5% (approximately \$8 million) general fund budget reduction plan for FY17. VDH has 41 service lines, with most of those service lines mandatory in nature. In addition, VDH has become more and more reliant on federal funds in recent years. Dr. Levine said that in order to cut \$8 million in general funds, VDH is going to have to make strategic decisions to stop providing certain

services. Mr. Edmondson asked if Dr. Levine envisioned the Board becoming involved in the decision of what services should be eliminated. Dr. Levine said that she thought it would depend on the rapidity with which budget reduction decisions must be made, and that there could perhaps be a role in helping to identify reductions for FY18. Mr. Edmondson also requested that VDH provide the Board with a listing of the 41 different service lines.

Ms. Getter then asked for a description of the difference in cost between today's Board meeting and a typical Board meeting. Mr. Hilbert responded that the primary difference was that for today's meeting there was thousands of dollars of additional expense for audiovisual services and building security. Ms. Getter then commented that an additional Board meeting would result in additional expense for VDH.

The next item in the Commissioner's report pertained to the conclusion of the investigation concerning allegations that had been made concerning the Office of the Chief Medical Examiner. The investigation, which was led by Dr. Melton, did not identify any deficiencies with regard to national accreditation. Other allegations were not able to be substantiated.

Dr. Levine ended the Commissioner's report by providing an update on recent VDH key personnel changes:

- Dr. Chris Wilson – Western Tidewater Health District and
- Dr. Karen Shelton, Mount Rogers Health District.

There was a brief discussion by Ms. Prichard and Ms. Getter concerning the cost of epi pens, and how educational outreach is needed to let individuals know how to access epinephrine without necessarily having to purchase an epi pen. The possibility of VDH developing a clinician's letter on the topic was discussed, but no decision was made.

Mr. Edmondson told the Board about a recent article in the Washington Post concerning a wide variety of public health issues, such as obesity, unequal access, end-of-life concerns, gun violence, and opioids. Mr. Edmondson requested the Commissioner's advice on how the Board could best become involved in advocacy concerning some or all of these issues. Dr. Levine responded that there has been an evolution to VDH's approaches to population health issues. Specifically, VDH has prepared Virginia's Plan for Well Being as a framework for action, but solutions will rely on community involvement. VDH is talking about the plan with stakeholders at the community level in order to promote a healthy, connected community. A key to implementing the plan is to focus on the data in order to make better informed decisions. Dr. Levine urged the Board to visit the Plan's website at <http://virginiawellbeing.com/>.

Abortion Facility Licensure Status Report

Mr. Bodin provided the Board with the abortion facility licensure status report. He told the Board that the information contained in their notebooks with regard to the number of licensed facilities is incorrect. The facility that he reported to the Board at its June 2016 meeting whose license renewal was on hold pending an informal fact finding conference now has an expired license. This facility had a suspended license and the facility did not file a plan of correction; therefore their license expired. Mr. Bodin told the Board that the Office of Licensure and

Certification (OLC) is in the process of conducting biennial surveys of the 14 abortion facilities licensed in Virginia, nine of which have temporary variances. Eight facilities have been inspected so far, five of which have F level deficiencies. Those facilities will be revisited in the coming months as well as the remaining six facilities that have not yet been surveyed. No complaints have been received since the June 2016 Board meeting. In response to a question from the Board, Mr. Bodin indicated that the only variances that have been approved are for building requirements.

Matrix of Pending Regulatory Actions

Mr. Hilbert reviewed the summary of all pending VDH regulatory actions. Since the June 2016 meeting, there have been four regulatory actions that the Commissioner took on behalf of the Board while the Board was not in session. Those actions are:

- Regulations for Disease Reporting and Control (12VAC5-90) – Approval of a Notice of Intended Regulatory Action;
- Radiation Protection Regulations (12VAC5-490) – Approval of a Notice of Intended Regulatory Action;
- Regulations Governing Dental Scholarship and Loan Repayment Program (12VAC5-520); and
- Waterworks Regulations (12VAC5-590) – Approval of a Final Exempt Action.

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

- Regulations for Licensure of Hospice (12VAC5-391).
- Rules and Regulations Governing the Construction and Maintenance of Migrant Labor Camps (12VAC5-501);
- Regulations Governing the Virginia Medical Scholarship Program (12VAC5-530);
- Waterworks Regulations (12VAC5-590);
- Sewage Handling and Disposal Regulations (12VAC5-610); and
- Private Well Regulations (12VAC5-630).

Public Comment Period 1

After a brief break, Mr. Edwards outlined the procedure for the first public comment period. This public comment period, as stated on the agenda, would cover the topic of the Regulations for Licensure of Abortion Facilities and related topics. He asked the public to be respectful and follow proper decorum by not holding up signs, jeering, and shaking of hands while others are speaking. Mr. Edwards said that it is important to the Board to be able to get public input to help the Board make informed decisions. He also asked that speakers be concise in their comments and that they not be unduly repetitive of what other speakers have already said. In order to maximize the number of people that can speak, Mr. Hilbert said that he would call the name of the speaker and an on-deck name for the next speaker.

Mr. Edwards said that the chair would entertain a motion to extend the time for the public comment period in order for the Board to hear from as many individuals who have signed up to speak as possible. Mr. Edmondson moved that the comment period be extended from the

standard 20 minutes to 60 minutes or to enough time to hear from everyone signed up to speak. Dr. Klein seconded the motion. The motion was adopted unanimously by a voice vote.

In addition to Delegate Jennifer Boysko and Delegate Marcia Price, 29 individuals spoke during the public comment period. Thirty individuals spoke in support of the final amendments to the Regulations for the Licensure of Abortion Facilities. The comments included that regulations need to be science based; removing parts of the regulation that are unconstitutional in light of the recent Supreme Court decision in *Whole Woman's Health v. Hellerstedt*; and that amendments to the regulations promote access of care for women.

One individual told the Board that the decision to defer taking action on the final amendments to the Regulations for the Licensure of Abortion Facilities is a step towards helping to fulfill requirements in the Code of Virginia, but added that that the final amendments are outside the scope of the Notice of Intended Regulatory Action for the Regulations for the Licensure of Abortion Facilities. This individual further stated that that VDH had violated the Code of Virginia by not providing, at least five days prior to the Board meeting, a summary of all public comments received during the public comment period to all individuals who had submitted a comment.

Mr. Edwards declared public comment period 1 to be over and thanked the audience for their input.

Mr. Edmondson initiated further discussion concerning efforts to schedule a special meeting to consider final amendments to the Regulations for Licensure of Abortion Facilities. Mr. Edwards stated that Mr. Hilbert was going to poll the Board in order to schedule a special meeting. Mr. Edmondson stated that the meeting date should not be dependent upon availability of meeting space in the Perimeter Center. Mr. Hilbert then told the Board that the Perimeter Center is available on Saturdays as well. Ms. Prichard suggested that Board members provide their available dates to Mr. Hilbert during the lunch break.

Mr. Edmondson stated that he is less concerned with having all 15 members present at the meeting, so long as there is a quorum. Mr. Beall told the Board that he disagreed with Mr. Edmondson's statement. Ms. Brosche stated that she would be very disappointed if she is not able to attend the special meeting.

Public Comment Period 2

After a break for lunch, Mr. Edwards opened public comment period 2. There were no comments from any member of the public.

2017 Proposed Board Meeting Schedule

Mr. Edwards referred to the proposed Board meeting schedule for 2017 as outlined in the members' notebooks: March 16, June 1, September 7, and November 30. Mr. Edmondson asked about moving the June 1 date to June 8. Mr. Hilbert indicated that Board Room 2 was not available on that date. This schedule was approved by unanimous consent.

Member Reports

Theresa Brosche – Virginia Nurses Association (VNA). She told the Board that the American Nurses Association (ANA) is providing a free comprehensive health risk appraisal (HRA), in collaboration with Pfizer Inc., to all registered nurses and nursing students. This HIPAA-compliant HRA gives nurses real-time personalized data on health, safety, and wellness risks, compares their personal results to national averages and ideal standards, and gives them access to a web wellness portal. To date, well over 300 RNs in Virginia have completed the HRA. The VNA continues to encourage more nurses to complete the HRA and anticipates receiving a Virginia-specific analysis in October. Based on this analysis, VNA's Workforce Issues Commission will develop their strategy for improving health and safety.

VNA is further preparing to launch, as part of a larger ANA "Healthy Nurse, Healthy Nation" social movement, an initiative for Virginia's nurses: the "3-Week Take 5 Challenge." In short, nurses will be encouraged to carve five minutes out of their day for three weeks in order to form a new healthy habit.

She also told the Board about the VNA Fall Conference to be held September 23-24. The focus will be "Creating a Culture of Community Well-Being." This two-day conference will continue to share and promote strategies and initiatives to create healthy individuals and communities within the Commonwealth.

She told the Board that VNA's Action Coalition is strategizing with health district directors and staff, Virginia Nursing Students Association leadership, the Board of Nursing, and other stakeholders to identify the most effective means by which to mobilize nurses on efforts that respond to the data and findings of Virginia's Plan for Well-Being. The group's second meeting is planned for October.

Finally, she told the Board that the Robert Wood Johnson Foundation announced that the VNA's Action Coalition is receiving a second two-year grant that will be used to continue the work of SYNC. SYNC is an inter-professional collaborative educational leadership institute between the Virginia Nurses Foundation, the Medical Society of Virginia, and the Virginia Hospital and Healthcare Association.

Linda Hines – Managed Care Health Insurance Plans. She told the Board that Medicaid plans to enroll more of its complex population recipients into managed care, starting in April 2017.

Dr. Wendy Klein – Medical Society of Virginia (MSV). She told the Board about forthcoming legislation that MSV is watching. MSV supports a bill that will be carried forward from last year's session regarding the deregulation of the certificate of public need. Several bills that MSV opposes include the creation of a non-renewable license for medical school students who do not match with a residency slot; different standard for treatment of Lyme disease; and scope of practice to allow nurse practitioners an independent scope of practice. MSV is anticipating that there will be more legislation in 2017 specifically tied to suboxone abuse and mandatory treatment/counseling when prescribing suboxone.

Brad Beall – Consumer Representative. No report.

Dr. Holly Puritz – Medical Society of Virginia (MSV). No report.

Megan Getter – Public Environmental Health Representative. She told the Board about a tracking tool by the CDC to track environmental hazards, the National Environmental Public Health Tracking Network. She also told the Board about a recent meeting of the National Environmental Health Association that was held in conjunction with HUD that focused on healthy homes. Topics for that meeting can be found online.

Faye Prichard – Local Government. No report.

Tommy East – Nursing Home Industry Representative. No report.

Dr. Jim Shuler – Virginia Veterinary Medical Association (VVMA). No report.

Jim Edmondson – Corporate Purchaser of Health Care. No report.

Stacey Swartz – Virginia Pharmacists Association. No report.

Hank Kuhlman – Consumer Representative. No report.

Mary Margaret Whipple – Hospital Industry. No report.

Bruce Edwards – Emergency Medical Services (EMS) Representative. – He told the Board that there are a lot of things going on in the EMS community. He asked that the VDH Office of EMS make an informational presentation to the Board in March 2017. A committee has been formed to tackle the issue of the trauma system. He said that a presentation will give the Board a sense of how good and how complex the EMS system is.

Other Business

Ms. Brosche told the Board that she and Mr. Edwards will be meeting with several members of the Virginia Stroke Systems Task Force (VSSTF) on September 21 at UVA to discuss stroke care in Southwest Virginia. Data will be viewed along with the Paul Coverdell Stroke Registry, the role of telemedicine/teleradiology, public education, and the VSSTF website.

Ms. Getter asked for an explanation of the supplemental summary of public comments that was included in the Board's meeting notebook. Dr. Levine told the Board that the failure to include 693 public comments into the public comment summary included in the agency background document first came to her attention on the afternoon of Tuesday, September 13. The omission came to her attention as the result of a letter that had been sent to JCAR. Dr. Levine immediately directed OLC staff to summarize the 693 comments and provide that information to the Board in the form of a supplemental summary. Dr. Levine also told the Board that VDH will conduct an investigation to determine the factors that led to this omission and how to ensure that such an omission not recur in the future. Dr. Levine also told the Board that the "Statement of

Final Agency Action” section in the agency background document should have been left blank prior to the Board meeting. VDH will change that practice for all subsequent regulatory actions.

Mr. Beall asked if there is correspondence to come to the Board from JCAR. Dr. Levine responded that JCAR voted to send a letter to the Board, and she assumed that the Board members would already have received such a letter.

There was a discussion of the various means by which members of the public can submit comments concerning regulatory actions. Mr. Hilbert explained that people can submit comments to the Virginia Regulatory Town Hall website, or they can send an email, letter, or fax to VDH.

There was a brief discussion concerning a series of emails that have been received from a single constituent concerning school nursing coverage in public schools. Dr. Levine told the Board that VDH has responded on two prior occasions, and that the latest email received from the individual does not contain any new information. VDH has referred the letter to the Department of Education. Ms. Brosche said that she requested feedback from the VNA on the issue.

Discussion then returned to the Regulations for Licensure of Abortion Facilities. Dr. Shuler asked if JCAR would be sending a letter to the Board. Dr. Levine said that she thought so, as that was what they had voted to do at their meeting. Ms. Getter said that if the 693 comments were not summarized they must not have been read. Dr. Levine said that the 693 public comments had been read but they were not included in the summary. Mr. Kuhlman said that the date of the Board meeting on the VDH meeting calendar was incorrect, being stated as September 25 instead of September 15. Ms. West said that was a typographical error that was corrected as soon as it was brought to her attention. She explained that the meeting date was always correctly stated on the Virginia Regulatory Town Hall website.

Adjourn

The meeting adjourned at approximately 1:10 p.m.