

COMMISSION ON VASAP
QUARTERLY BOARD MEETING
Thursday, March 29, 2018

Minutes

Attendance

Commission Members

Sheriff Michael L. Wade, Acting Chairman
Senator Glen H. Sturtevant, Jr.
Delegate David J. Toscano
The Honorable Mary Jane Hall
The Honorable George D. Varoutsos
The Honorable Gino W. Williams
Mr. John Saunders
Mr. Anthony Carmichael
Ms. Mary Read Gillispie
Ms. Pat Eggleston

Telephone Conference

Senator Richard H. Stuart

Absent

Ms. Mellie Randall

Commission Staff

Ms. Angela Coleman, Executive Director
Mr. Oscar Brinson, Legal Counsel
Ms. Rosario Carrasquillo
Mr. Richard Foy
Ms. Charlene Motley
Mr. Christopher Morris
Mr. Richard Phillips

Office of the Virginia Attorney General

Ms. Janet Baugh, Senior Assistant Attorney
General

ASAP Directors

Mr. Miles Bobbitt
Ms. Andrea Cosans
Ms. Sharneé Eure
Ms. Angela Fortune
Mr. James Hatcher Johnson
Ms. Vicki Kesler
Ms. Krystal Hullette
Mr. Roy-Keith Lloyd
Ms. Jaime Moran
Ms. Deborah Morgan
Ms. Laura Offield
Mr. Kevin Ortegel
Ms. Pam Simmons
Mr. Rick Wilkins

Guests

Ms. Linda Aldridge
Mr. Zackery Allentuck
Mr. Felix Comeau
Ms. Michele Denhoff
Ms. Jennifer De Nova
Mr. Brad Fraley
Mr. Chad Goodwin
Ms. Cynthia Hites
Mr. David Hites
Mr. John Honea
Ms. Jennifer O'Brien
Officer Smith
Ms. Jordan Stamulis
Mr. Matt Strausz
Mr. Toby Taylor
Ms. Ana Villatoro

Time and Place

The quarterly meeting of the Commission on Virginia Alcohol Safety Action Program (VASAP) was held on March 29, 2018 at the Virginia State Capitol Building in House Room 1. The meeting was called to order by Sheriff Michael L. Wade, Acting Chairman.

Welcome

Sheriff Wade welcomed and thanked everyone for attending the meeting.

Approval of Minutes

A motion was made by the Honorable Gino W. Williams, and properly seconded by the Honorable Glen H. Sturtevant, Jr., to approve the Commission meeting minutes from December 8, 2017. All were in favor.

Executive Finance Report

The Executive Finance Committee report was presented by Ms. Mary Read Gillispie, Director of the Central Virginia ASAP.

The Executive Finance Committee met on March 22, 2018.

Ms. Gillispie stated that a large portion of the Executive Finance Committee meeting was dedicated to discussion of Virginia Regulatory Petitions 266 and 267.

Smart Start

Ms. Gillispie provided an update to the decision from the Commission meeting on December 8, 2017 regarding Smart Start's suspension. Mr. Christopher Morris, Special Programs Coordinator for the Commission on VASAP, provided a progress report which was followed by a presentation from Smart Start's CEO, Mr. Matt Strausz.

Mr. Morris stated that Commission staff and Smart Start co-created an action plan to address the issues discussed at the December 2017 meeting. Mr. Morris discussed each item of the action plan. Smart Start immediately acted to correct all items; therefore, the Commission on VASAP lifted Smart Start's suspension so that they were able to accept referrals as of January 16, 2018.

Mr. Morris reported that missing data was an issue which has been corrected fully. Missing photographs were due to a needed software update not being made when there was a change to daylight savings time. The number of missing photo occurrences is now within industry norms.

Mr. Morris discussed that Smart Start rolled out its new alternative light source throughout the state. By the end of February, Mr. Richard Phillips, Ignition Interlock Technical Support Specialist for the Commission on VASAP, called ten percent of Smart Start's clients who installed the light source and no problems were noted. Mr. Phillips also provided the clients with the contact phone number for the Commission office if they had any issues. Since the time that the Commission contacted the clients, they have not had any issues.

Mr. Morris announced that Smart Start started an interlock technician workshop. Mr. Morris and Mr. Phillips were also invited to attend. It is a workshop where Virginia vendors gather together to discuss numerous topics, for example the alternative light source. The interlock technician workshop plans to meet on a quarterly basis.

Mr. Morris reported that Smart Start has changed their calibration reports to reflect the actual calibration confirmation number instead of the “as found” number. The “as found” number will be located within Smart Web’s web monitoring system for review by the ASAPs.

Smart Start has indemnified all clients who suffered vehicle damage for the costs of the damage and resulting transportation expenses or inconvenience.

Mr. Morris complimented Smart Start on how well they have worked on getting these issues corrected and for taking the initiative to start an interlock technician workshop. He was pleased to announce that the action plan the Commission on VASAP and Smart Start worked on was very well implemented.

Mr. Strausz thanked the Commission staff for working with Smart Start on formulating an action plan rapidly after the last Commission meeting. Mr. Strausz stated that Smart Start met with Commission staff on December 21, 2017 and December 28, 2017 to work on the action plan. Smart Start went over the areas of focus with Mr. Morris. The plan was completed on January 12, 2018 and agreed to on January 16, 2018.

In early January 2018, the alternative light source was put in place throughout all Smart Start locations in Virginia.

Mr. Strausz stated that Smart Start provided documentation with additional clarification on each individual person who was inconvenienced due to installation problems, confirming that all clients were reimbursed for any transportation needs they had during that time.

Mr. Strausz stated that Smart Start updated several of their reports which reflect the calibration process. They also discussed with Mr. Morris about how the VASAP staff would like to receive the reports. Smart Start has since implemented the revised reports throughout the VASAP System.

Mr. Strausz announced that the vendor working group had its inaugural meeting on March 28, 2018. He reported that it was a success and that there was already excitement among the vendors about the next meeting. Mr. Strausz stated that the working group is an opportunity for vendors in Virginia to continue to raise the bar, standardize procedures, and work together to deliver a better product to the end user.

Mr. Strausz stated that Smart Start benefited by having weekly communication with the Commission on VASAP, working through the action plan, and making sure that all the areas were addressed. He expressed Smart Start's appreciation for authorization to receive ignition interlock installation referrals again. Smart Start looks forward to receiving updates and continuing to partner with VASAP in the future.

Smart Start's ability to receive new installations was restored with no probationary period. The Commission on VASAP will continue to monitor Smart Start closely. A plan has been developed where the Commission can have stronger communication between the state office and all of the interlock vendors.

Executive Director's Report

Ms. Angela Coleman presented the Executive Director's report.

Certification

Ms. Coleman stated that the Code of Virginia requires the Commission to conduct certification of all local ASAPs every three years. The current certifications for all 24 programs expire on June 30, 2018. Commission staff has completed site visits for 19 programs with the remaining five to be completed by the first week of May. Different this year, the certification reports will be mailed to all members of the policy board and not just the local ASAP policy board chair. This new process will be conducted so that all of the policy board members will be aware of the status of the program. The ASAP directors will be provided the opportunity to respond and present an action plan to resolve any deficiencies noted in their certification report. It is hoped that by the next commission meeting on June 8th, all deficiencies will have been corrected and the Commission will be able to recommend full certification of all 24 ASAPs. Ms. Coleman also reminded the directors and the Commission members that the next meeting will probably be a little longer due to review of the certification reports and Fiscal Year 2019 ASAP budgets.

Recidivism Study

The Commission was awarded a grant of \$100,000 to conduct an evaluation of the VASAP system with focus on the prevention of DUI recidivism. Proposals were received from several researchers and the award was given to a research company based out of Fairfax, Virginia. The selected contractor, ICF, is a global company with experience in research for both public and private entities. ICF has started to collect and clean the necessary data and will be coordinating with the Virginia Department of Motor Vehicles (DMV) to match VASAP data to DMV records for analysis. It is anticipated that this grant will take the full length of time. The study is not expected to be completed until September 30, 2018. The final report should be ready for review by December. Ms. Coleman stated that the last review of the VASAP system was in 2004, adding that policies have changed significantly since that time. The Commission is looking forward to receiving the study findings.

Audit

The Commission coordinates the yearly financial audits of the 24 local programs. The current audit contract expires on June 30th. VASAP solicited bids for audit services; six companies submitted bids and four were selected for interviews. After conducting interviews, the Commission on VASAP contracted with a new auditor, Brown Edwards. Brown Edwards is one of the leading firms in Virginia serving the governmental and municipal industry. They spend approximately 30,000 hours annually providing audit accounting and advisory services to governmental entities.

The Commission on VASAP is looking forward not only to audits but in making some improvements in the local program budgets and financial accounting that will make the audit process smoother. Brown Edwards' contract will begin on July 1, 2018. A lengthy orientation period is not anticipated since the auditors are experienced, and they happen to be the auditors for the state VASAP office, so they have communicated with the Commission staff in the past.

2018 Training Conference

The 2018 Training Conference will again be held at the Hampton Roads Convention Center. The dates will no longer coincide with the Judicial Conference. The VASAP Conference will be held August 20th and 21st.

Public Information

Early in march, the Commission on VASAP was the only non-retail vendor at the 2018 Virginia Wine Expo, hosted at the Mainstreet Train Station in Richmond. The Commission staff anticipated no one would come to the VASAP booth. However, there were long lines of people on both days. Attendees wanted to look at the drunk driving goggles and to assure the Commission staff that they were using safe transportation options or walking to downtown hotels.

Attending this event was a great opportunity for the Commission on VASAP to be in that environment and develop some partnerships. So, from this point forward the Commission on

VASAP will be working with some of the winery distributors on a drinking responsibly message. Ms. Coleman thanked the Commission staff who pulled this event off in a matter of four hours when it became apparent that the VASAP display needed some last-minute modifications to be appropriate for the venue.

Ms. Coleman described a photograph of VASAP's Wine Expo booth that was displayed for the Commission members. "Drunk Buster" goggles were made available to attendees so that they could simulate the effects of alcohol impairment. The Honorable David J. Toscano stated that he liked the goggles and asked if the staff could bring them to the next Commission on VASAP meeting. A poster was on display so that people could match the color-coded goggles with each simulated level of impairment. Public information commercials were looping on the television screen. The Commission provided coasters, keychains and candy. Ms. Coleman stated that one thing people asked for at the Wine Expo was the interlock device. Since a car cannot be brought in the exhibit area, next year the Commission will try to bring an interlock table demonstration unit for display.

The Commission on VASAP has started reaching out to college campuses in the area. Commission staff has provided public information at some Virginia Commonwealth University basketball games this year. On March 28, 2018, Ms. Charlene Motley, Field Services Supervisor for the Commission on VASAP, and Mr. Morris were at the Diamond, in Richmond for the Virginia Commonwealth University versus the University of Virginia baseball game. The goggles and an ignition interlock equipped car were on display. Ms. Coleman thanked Alcolock for attending as well.

VASAPDA

Ms. Jaime Moran, Bull Run ASAP Director, presented the VASAP Directors' Association report.

Ms. Moran stated that VASPDA is working on the Spring Director's Conference and the administrative training to assist Commission staff for the VASAP Training Conference in August.

VASAPDA is also working with Commission staff to update the license restoration guidelines, and they have begun to review and revise the Reckless and Aggressive Driver Education Program (RADEP).

Executive Finance Report Continued

Virginia Regulatory Petitions 266 & 267

Ms. Coleman introduced Virginia Regulatory Petitions 266 and 267.

Virginia Code Section §2.2-4007 states that any person may petition an agency to request development of a new regulation or amendment of an existing regulation.

She stated that in an email letter dated January 12, 2018, Mr. David Hites petitioned the Commission on VASAP to amend Virginia Code §18.2-270.1 and the VASAP Case Management Operational Guidelines pertaining to several ignition interlock monitoring

procedures. Almost all of Mr. Hites' request was not applicable to this statute since it did not involve amendment of a regulation. Nevertheless, after consultation with the Attorney General's Office and the Virginia Registrar of Regulations, the Commission on VASAP sent notice of the request to the registrar on January 25, 2018.

On January 26, 2018, Ms. Cynthia Hites petitioned the Commission on VASAP to amend Virginia Code §§18.2-270.1-2, and Virginia Administrative Code 24VAC35-60 with regard to the terms "alcohol and ethanol." Notice of this request was sent to the registrar on January 26, 2018.

Both petitioners' requests were published in the Virginia Register on February 19, 2018 for a 21-day public comment period ending on March 11, 2018.

No additional public comment period was granted.

The details of the Virginia Regulatory Petitions 266 and 267, as well as the comments posted by other individuals on the Town Hall site, were presented to the Commission members and also distributed via email prior to the meeting.

Both petitioners, Mr. Hites and Ms. Hites, were permitted to speak individually to their petitions for a time period of two minutes. Virginia Interlock vendors were also granted a time period of two minutes to speak to the petition. The public comment period on the Virginia Regulatory

Town Hall website was open for 21 days and closed on March 11, 2018. No additional public comment period was granted.

Virginia Regulatory Petition 266

Mr. Hites stated the following:

“My Name is Dave Hites. I live in Hampton, Virginia. Since my time is short, I will get right to the point. I would like to thank you for allowing me to speak today. I have requested several changes to the case manager guidance document and a change to the ignition interlock fail point. Without these changes, more Virginians who have not done anything to violate the program would be forced to start their interlock time all over again, or worse find themselves back in court defending themselves against an interlock violation. If case managers were held to the standards which I have proposed for the case management document, they would be fully upholding the intent of the law, violating only those persons who have truly violated the program, and using the data from the interlock devices to determine if the offender’s ethanol elimination rate is at or even near 0.015 percent per hour. The proposed changes would also let the offenders know who to contact throughout the program should they have issues with the interlock device or company. They will have a chain of command they can follow if they wish to file a complaint.”

“The next proposal change that I would like to talk about is the six-month consecutive duration the ignition interlock must be installed. There are many reasons why a person might not be able to keep an interlock on their car for that length of time, things like a car accident, or a license suspension because of point accumulation, or your device may be on a friend’s car that he or she

has to sell. If the offender does not drink or drive they should not be punished with extra time just because the consecutive duration could not be met; oftentimes offenders time is restarted because of a violation. Many violations could be avoided by raising the fail point from 0.02 percent Blood Alcohol Concentration (BAC) to 0.04 percent BAC, and the case managers would not be buried in paperwork sending violation letters that would lead to court. Keeping drunk drivers off road can still be accomplished at the fail point of 0.04 percent BAC. Since ignition interlock devices are not ethanol specific, the allowance must be made to avoid positive results from other substances like isopropanol or propylene glycol. Thank you.”

Virginia Regulatory Petition 267

Ms. Hites stated the following:

“Hello; my name is Cynthia Hites. I have given you each a packet. I did have this device installed on my vehicle, actually, two devices on two different cars with two different handsets and was completely alcohol free, completely alcohol free. I have not had a drop to drink since May of 2016, and in the interim, this device began reading high BAC levels. If you see on what I have given you, what it ended up being was 23 high BAC levels on sober breath which equates to nine individual events, where you can see the dramatic events, where they start at zero, rise, and then go back to zero within an extreme amount of time. So basically, nine times I was stranded, locked out of my car, isolated and humiliated, being sober. I am not quite sure what the device is reading, but we can be assured it is not ethanol. Based on these readings, ethanol is a scientific impossibility, so I am not sure what the device is reading. I have some very plausible scientific assumptions of what it could be. But we have nine instances where we have two devices and two different models completely and concretely proving that this is not reading

ethanol, which is the reason why the word ethanol needs to be changed. People think ethanol is alcohol and that is not true; all alcohols are not ethanol. Ethanol is alcohol, but the converse is not true. Language needs to be changed to prevent this from happening to people like me.”

Delegate Toscano asked, “If it is not ethanol that the ignition interlocks are reading, what are they reading?”

Mr. Felix Comeau of Alcohol Counter Measures Systems, an affiliate of Alcolock USA, responded to Delegate Toscano’s question and to the petitions.

Mr. Comeau stated the following:

“The petition cites two different units of measures, in Europe being milligrams per liter and in the U.S. being grams per 210 liters of breath, so there is an erroneous assumption there. In the U.S., the set point of interlocks is 0.02. Typically, as in Virginia, the variance is plus or minus 0.003. As in Virginia, all Alcolock interlocks must be using electrochemical sensors, being fuel cells that must be able to maintain that variance. The interlock devices are alcohol specific. It means that they measure alcohol, typically ethol alcohol, the substance in common beverages. Ethyl alcohol is also present in medicinal substances such as cough syrups, mouthwashes, and toothpaste. It is also found in baked goods, doughnuts, fresh foods and so on. So typically, or oftentimes, the person might eat or take some medicine and have a transient amount of alcohol in their mouth. It is transient because it is gone in minutes. In the interlock report, if that person is blowing into an interlock, it will perhaps show a positive, and then quickly thereafter a negative, meaning zero. It is not unusual. To the point of what does it measure? It measures alcohol,

being ethyl alcohol. There are other alcohols; there is methyl alcohol, wood alcohol, rubbing alcohol and others, but they are toxic. They can make you very sick or lead to your death. The interlock specifications in many countries require that ignition interlock devices be tested against low levels of other alcohols and amongst other substances including biological contamination such as from a diabetic, acetone. In all cases if a device meets specifications, then it is nonresponsive to these other substances.

The Honorable Mary Jane Hall inquired about Ms. Hites hypothesis as to what would account for the readings on her ignition interlocks installed on her vehicles.

Ms. Hites responded:

“One of the hypotheses is ketosis either ketoacidosis, diabetic ketoacidosis, or nutritional ketosis, also coupled with starvation ketosis. What this does in the human body is cause an increase in acetone which breaks down into isopropanol through the body. Isopropanol is expelled on the breath which is an alcohol. It is a low weight molecular alcohol, which is in my opinion, very easily detectable by these machines. That is one particular theory.

Also, there are about three other ketone bodies such acetoacetate, beta-hydroxybutyrate, and toluene. There are a host of VOCs (volatile organic compounds) that are on expired breath that can set this off. The National Highway Traffic Safety Administration (NHTSA) also let me know that acetone was the only thing that they have found that will set this off. I FIOAed (Freedom of Information Act) all testing for the interlock and I was unable to get the acetone testing. So, I am not sure what it could be, but I know it is not ethanol.”

Mr. Comeau also responded to Judge Hall's question, stating that acetone is one of the major ketones that is produced in the body of a person in a diabetic state. A diabetic with significant acetone concentration will exhibit signs of impairment; however, acetone is one of the substances that are tested on all breath testing devices, and breath testing devices used by either the police, or in the field of alco-interlocks do not respond to acetone. They are alcohol specific; that is the nature of the sensor. In respect of the reverse metabolic pathway of acetone converting to isopropanol, this is a hypo-theoretical process that is not substantiated in field trials.

Delegate Toscano asked if other clients have experienced the same situation.

Mr. Morris stated that cases have come up in the past, however the Commission has never been able to substantiate it. In Virginia, per the ASAP ignition interlock agreement, the Commission on VASAP requires people to retest within 15 minutes of a failed test. It is required so that there are more BAC values to review. Typically, if the individual consumed alcohol it will be a slow BAC drop. However, if it is something foreign, it is going to be gone within that 15-minute range.

Mr. Morris stated that in general, not referring to any specific case, if somebody calls the Commission office and states that they have a medical issue that may have caused a violation, clients are urged to go to the doctor and submit medical documentation. The Commission on

VASAP will review the documentation and if VASAP doesn't have an answer or explanation, then the information will be sent to someone who can provide clarification.

Sheriff Wade stated that the Virginia Department of Criminal Justice Services (DCJS) standard 4.46.6.1, on conducting field tests, teaches all police officers to ask a person if they have diabetes or any other physical impairment that can mimic someone who is impaired.

Judge Hall asked that if the law were to change the wording from alcohol to ethanol, do the Virginia ignition interlock vendors have the technology to accommodate the change.

Mr. Hites stated the following: "It is supposed to; there is a statute (24VAC35-60-70 section F paragraph 3) that the device shall be alcohol specific, to avoid positive results from other substances and 24VAC35-60-20 defines alcohol as ethanol."

Judge Hall stated that if it already defines alcohol as ethanol, what changes is Ms. Hites requesting to be included?

Ms. Hites stated the following: "It is a loophole for these people."

Mr. Hites stated the following: "The devices are alcohol specific."

Judge Hall asked if the devices were ethanol specific.

Mr. Hites stated the following: “No, they are required to be ethanol specific. They are alcohol specific, but not ethanol specific.”

Mr. Comeau stated that ethanol is the common alcohol used in beverages whereas these devices are tested against methanol and isopropanol, the ignition interlocks are certified to be alcohol or ethanol specific because they do not show readings, that go into the fail zone. If there is any reading from these other alcohols, it is less than what is measurable in an ignition interlock.

Sheriff Wade asked what effects other alcohols, besides ethanol, have on the body.

Mr. Comeau stated that the other alcohols are toxic. They can make a person very sick and, in some cases die.

There are no alcohols that you can consume that would not cause problems in your body.

As nature has it, ethanol is the beverage alcohol that can be consumed safely within limits; the others ones will cause damage to your body.

Mr. Brad Fraley, an Intoxalock representative, spoke to the petitions.

Mr. Fraley stated the following:

“To go from a standard, of just using the term alcohol to ethanol, would not solve this problem. Without seeing the records there, if we are seeing readings go high and then back to zero, in a relatively quick amount of time, what we are talking about there is a breath alcohol. It is a 99% percent certain that it is going to be ethanol, so this change would not accomplish anything. We

are still reading alcohol. If we are talking about some ambient air sample, such as the extreme example of you spilling windshield washer fluid, putting large amounts of methol alcohol inside your car you would see very low readings that are constant and erratic. If we are talking here about moving from zero quickly to a relatively high reading, and then going back to zero relatively quickly, I am 99% sure that it is ethanol. It is mouth alcohol; it is not consistent with alcohol that has been consumed. I just wanted to reiterate, this change that has been recommended would not stop that problem.”

Executive Session

Mr. Anthony Carmichael moved, that members of the Commission convene into Executive Session under the *Code of Virginia*, pursuant to Section §2.2-3712, to discuss matters exempt under the *Virginia* Code §2.2-3711(A) (7) legal issues, specifically those legal matters related to two petitions to amend regulations filed pursuant to Virginia Code §2.2-4007 and §2.2-3711 (A) (15) for discussion for the medical and or mental health records exempt under §2.2-3705.5. The motion was properly seconded. All were in favor.

Return to Open Session

Mr. Anthony Carmichael moved to certify by roll call vote that only matters related to *Virginia* Code §2.2-3711(A) (7) legal issues, specifically those legal matters related to two petitions to amend regulations filed pursuant to Virginia Code §2.2-4007, and §2.2-3711 (A) (15) for

discussion of the medical and or mental health records exempt under §2.2-3705.5 were discussed during the closed meeting. The motion was properly seconded. All were in favor.

Sheriff Michael L. Wade, Vice Chairman	YES
Senator Richard H. Stuart	YES
Senator Glen H. Sturtevant, Jr.	YES
Delegate David J. Toscano	YES
The Honorable Mary Jane Hall	YES
The Honorable George D. Varoutsos	YES
The Honorable Gino W. Williams	YES
Mr. John Saunders	YES
Ms. Pat Eggleston	YES
Mr. Anthony Carmichael	YES
Ms. Mary Read Gillispie	YES

Senator Sturtevant thanked Mr. Hites and Ms. Hites for bringing petitions 266 and 267 before the Commission.

Senator Sturtevant stated that the Commission on VASAP does not have the legal authority to change the Virginia Code or the Virginia Regulations, per advice of counsel.

Senator Sturtevant moved that Virginia Regulatory Petition 266 to amend Virginia Code §18.2-270.1 and the VASAP Case Management Operational Guidelines pertaining to several ignition

interlock monitoring procedures; and Virginia Regulatory Petition 267 to amend Virginia Code §§18.2-270.1-2, and Virginia Administrative Code 24VAC35-60 with regard to the terms “alcohol” and “ethanol” be denied and that the Commission on VASAP submit a letter to petitioners, Mr. Hites and Ms. Hites, outlining the reasons thereof. The motion was properly seconded by Judge Hall. All were in favor.

2018 Meeting Dates

The Commission on VASAP will meet in 2018 on the following dates:

Friday, June 8	10:00 a.m.
Friday, September 14	10:00 a.m.
Friday, December 7	10:00 a.m.

Adjournment

Judge Williams moved, and it was properly seconded by Mr. Saunders, to adjourn the meeting.