

**MINUTES OF THE ARKANSAS STATE BOARD OF HEALTH
QUARTERLY MEETING
APRIL 27, 2023**

MEMBERS PRESENT

Mike Riddell, MD, President
Susan Weinstein, DVM, President-Elect
Renee Mallory, RN, Interim Secretary
Kay Chandler, MD, Surgeon General
Perry Amerine, OD
Loy Bailey, RS
Mellie Bridewell
Eddie Bryant, MD
Lane Crider, PE
Dwayne Daniels, MD
Brad Erney, DMD
Melissa Faulkenberry, DC
Darren Flamik, MD
Phillip Gilmore, PhD
Anthony Hui, MD
David Kiessling, DPM
Balan Nair, MD
Donald Ragland
Blake Torres, Pharm.D
Clay Waliski
James Zini, DO

GUESTS PRESENT

Dr. Bala Simon, ADH, Deputy Chief Medical Officer
Dr. Jennifer Dillaha, ADH, Director
Don Adams, ADH, Chief of Staff
Cassie Cochran, ADH, Deputy Director for Public Health Programs
Dr. Naveen Patil, ADH, Deputy State Health Officer
Dr. Namvar Zohoori, ADH, Deputy State Health Officer
Dr. Austin Porter III, ADH, Deputy Science Officer
Dr. Chychy Smith, ADH, Director, Health Disparities Elimination
Dr. Richard McMullen, ADH, Senior Scientist
Dr. Mike Cima, ADH, State Epidemiologist
Dr. Rachel Sizemore, ADH, Office of Oral Health
Shane David, ADH, Pharmacy Services Section Chief
Connie Melton, ADH, Director, Center for Health Protection
Shirley Louie, ADH, Nuclear/Radiological and Environmental Liaison Officer
Laura Shue, ADH, General Counsel
Reginald Rogers, ADH, Deputy General Counsel
Chuck Thompson, ADH, Attorney
Brian Nichols, ADH, Attorney
S. Craig Smith, ADH, Attorney
Chuck Hardin, ADH, Attorney/Privacy Officer
Laura Cima, ADH, Pharmacist
Christy Kreese, ADH, EMS Section Chief
Bernard Bevill, ADH, Radiation Control Section Chief
Kelli Kersey, ADH, Cosmetology Board Director
Alex Hooper, ADH, Personal Care Services Branch Manager
Terry Paul, ADH, Environmental Health Branch Chief
Jim Carter, ADH, Chief Information Officer
Jeremy Courtney, ADH, Director, Center for Public Health Practice
Lance Jones, ADH, Director, Engineering
Meg Mirivel, ADH, Director, Communications
Haley Ortiz, ADH, Director, Health Policy
Matt Gilmore, ADH, Boards and Commissions Coordinator
Jo Thompson, ADH, Chief Financial Officer
Finley Hill, Jr., ADH, Medical Marijuana Section Chief
Heather Parker-Foster, ADH, Water Training and Certification Officer
Carissa Ansel, ADH, Sr. Environmental Health Specialist
Cheryl Roland, ADH, Data Info Systems Administrator
Brian Nation, ADH, Massage Therapy Inspector
Kelli Adcock, ADH, Administrative Analyst

Mandy Thomas, ADH, CHP ADMO
Job Toussaint, ADH, Health Program Specialist
Jazalyn Vera-Bowen, ADH, Health Program Specialist
Brittany Meyer, ADH, CDC EEP Fellow
Steven Speer, ADH, A/V Contractor
Tressa Williams, ADH, Board of Health Liaison
Syble Davis
Mike Mitchell, Attorney
Van Johnson
Kirby Clark, MMT, BCTMB
Wendy A. Scott, MMT, CPT
Julie Eckert, MMT
Mai Lin Petrine, FSMTB
Dennis Sternberg, ARWA
Albert Pilkington
Amanda Story
Randy Kassissieh
Craig Wilson

The quarterly meeting of the Arkansas State Board of Health was held on Thursday, April 27, 2023, in the Joseph H. Bates Auditorium of the Arkansas Department of Health.

CALL TO ORDER

Dr. Mike Riddell, President, called the meeting to order at approximately 9:57 a.m. and asked for a roll call which was conducted by General Counsel Laura Shue.

APPROVAL OF MINUTES

Dr. Phillip Gilmore moved, and Dr. James Zini seconded, that the Minutes of the January 26, 2023, Quarterly Meeting be approved. Motion carried by unanimous vote.

INTRODUCTION OF NEW SURGEON GENERAL, DR. KAY CHANDLER

Dr. Jennifer Dillaha, ADH Director, gave a brief introduction and welcome to Dr. Kay Chandler, the new Surgeon General, to the Board of Health. Dr. Chandler expressed her excitement for being selected and having the opportunity to serve.

OLD BUSINESS

SIGNED COPY OF RESOLUTION FOR DR. TERRY YAMAUCHI

Ms. Shue stated that a signed copy of the Resolution for Dr. Terry Yamauchi is being made a part of the record for historical purposes and a framed copy will be displayed in the Board of Health Room at Freeway Medical.

NEW BUSINESS

DRINKING WATER ADVISORY AND OPERATOR LICENSING COMMITTEE APPOINTMENT

Mr. Lance Jones, ADH Engineering Section Director, presented three nominations, Charles Tad Bohannon of Central Arkansas Waterworks, James Whisenhunt of Texarkana Water Utilities, and Bryan Smith, General Manager at the Grand Prairie Regional Water District in Stuttgart for consideration to the Drinking Water Advisory and Operator Licensing Committee. Mr. Lane Crider moved, and Dr. Brad Erney seconded, to approve the nomination of Bryan Smith. Motion carried by unanimous vote.

EXEMPTION REQUEST TO RULES FOR CONTROL OF SOURCES OF IONIZING RADIATION

Mr. Bernard Bevill, ADH Radiation Control Section Chief, requested an exemption to the gonad shielding requirements in the Rules for Control of Sources of Ionizing Radiation.

Discussion occurred regarding who makes the decision to utilize gonadal shielding; the five percent risk to exposure involved; and male fertility.

At the conclusion of the discussion, Dr. Perry Amerine moved, and Dr. James Zini seconded, that based upon the lack of information of male fertility age, possible risks involved from x-ray exposure to the gonads, and the perception of lack of protection of personal health, to not approve the exemption. The motion carried by unanimous vote.

APPROVAL TO IMPLEMENT AND ADMINISTER STATE TESTING FOR MASSAGE THERAPY LICENSING

Ms. Kelli Kersey, ADH Cosmo/Massage/Body Art Section Chief, requested approval for development and implementation of a state examination for incoming applicants seeking licensure in massage. The Massage Therapy Technical Advisory Committee (MTTAC) voted to pursue development of the exam. ADH is neutral on the recommendation.

ADH Interim Director Renee Mallory asked Ms. Kersey to discuss what exam massage therapist currently take. Ms. Kersey stated there are three exams that are accepted. One is MBLEx; however, the other two are no longer being given. There is one national exam that allows applicants to move from state to state with their license.

Dr. Melissa Faulkenberry asked whether therapists from out of state had to retake the MBLEx. Ms. Kersey stated if it was one of the three listed in the rules, they would not.

Dr. Faulkenberry asked would the new testing replace the MBLEx. Ms. Kersey replied no, applicants would have a choice.

Dr. Faulkenberry asked who would make up the questions. Ms. Kersey stated a committee within MTTAC.

Dr. Faulkenberry asked what is wrong with the MBLEx. Mr. Chuck Thompson, ADH Attorney, replied there is nothing wrong with the MBLEx; however, a state exam would be cheaper. The MBLEx is approximately \$200 whereas a state exam would be about \$75.

Dr. Faulkenberry asked if it would be the same quality of questions the MBLEx. Mr. Thompson stated that MTTAC would make up the questions, some questions may be more pertinent to Arkansas, but they would test over the modalities and issues that are of interest in massage therapy. The idea was to be another option from the MBLEx for those who want to maintain their practice in Arkansas.

Dr. Balan Nair asked in terms of standardized testing, if there is nothing wrong with the MBLEx, do you really want to get into standardized testing. It is not easy to create a standardized test, you must decide how to create those levels of questions which are either going to be tougher, lesser or the same. If creating something on the same level, why not just use the MBLEx, since it is accepted in other states.

Mr. Thompson stated that PSI is experienced in developing standardized tests including making sure they are valid for the purposes of challenges based on discriminatory questions. There would be a onetime cost of approximately \$5000 to get the test up and running and then it would be \$75 to the student. It is not going to be a cost to the Department.

Dr. Sue Weinstein asked are there state-specific differences in massage therapy. Mr. Thompson replied that most states accept the MBLEx. MBLEx's argument is they want standardization across states. There is the question, standardization versus Arkansans who want to stay here and would be interested in more specific questions that affect Arkansans.

Dr. Weinstein asked what type questions would be specific to Arkansans. Mr. Thompson stated Arkansas has a tradition of having the relaxation style massages as opposed to medical massages. There has not been a health or safety reason why a properly vetted state exam as an option would not be proper.

Dr. Mike Riddell asked if an applicant has taken the MBLEx or another state certified exam for massage therapy and moves to Arkansas, is it recognized and honored or are they required to re-test. Mr. Thompson stated the MBLEx is automatically recognized but there are provisions for reciprocity. An individual coming from another state with a state exam only would be reviewed to see if it is comparable to the MBLEx or if there was an Arkansas state exam and still grant the license without them re-taking the test.

Mr. Clay Waliski asked about reciprocity for the Arkansas test. Mr. Thompson replied that would be state to state. If it is MBLEx and the other state recognizes the MBLEx, it would be automatic.

The requested approval died due to a lack of a motion.

REVISIONS TO THE RULES FOR HOSPITALS AND RELATED INSTITUTIONS

Ms. Connie Melton, ADH Center for Health Protection Director, requested authorization to proceed with a rule revision to the Rules for Hospitals and Related Institutions. A new hospital licensure type called Rural Emergency Hospital is being added.

There was discussion regarding the definition of optometric physicians in rural hospitals.

Dr. Sue Weinstein moved, and Dr. Phil Gilmore seconded to accept the changes. Motion carried by unanimous vote.

RULES PERTAINING TO ONSITE WASTEWATER SYSTEMS

Mr. Terry Paul, ADH Environmental Health Branch Chief, presented the Onsite Wastewater Rules to start the process and change the role to the Arkansas Administrative Procedures Act. This change is to allow good management practices to be used in certain subdivision lots that only exhibit a brief seasonal water table.

Mr. Lane Crider moved, and Mr. Loy Bailey seconded that the changes be accepted as presented. Motion carried by unanimous vote.

APPOINTMENT OF COUNTY HEALTH OFFICER DR. KELSEY REELY

Dr. Namvar Zohoori, ADH Deputy Director of Science, presented Dr. Kelsey Reely for approval as County Health Officer for White County. Dr. James Zini moved, and Dr. Balan Nair seconded, for the appointment of Dr. Reely. Motion carried by unanimous vote.

REVISIONS TO THE RULES GOVERNING MEDICAL MARIJUANA REGISTRATION, TESTING, AND LABELING

Mr. Craig Smith, ADH Attorney, presented the amendments to the rules for medical marijuana. These rules have not been completely updated since 2017, when they were first implemented. In addition to previously approved changes by the Board of Health for testing requirements, labeling requirements, and the addition of provisions for concentrates and edibles and addressing processors, the current proposed changes revised the testing requirements and specifically removed prior proposed changes to batch sizes after the Department was provided health and safety concerns for larger batch sizes.

Board members stated their concerns about other Arkansas rules administered by the Alcoholic Beverage Commission under the Department of Finance and Administration, whether there are prescription requirements, physician DEA numbers, shipment and distribution, testing, licensing of labs, complaints against a lab, posting of warning statements in labs and dispensaries, and misuse of cards.

Mr. Lane Crider asked that the department consider an educational session to address these concerns and moved to accept the changes as presented. Dr. Eddie Bryant seconded, and the motion carried with Dr. Blake Torres voting against.

EMS HEARING PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDERS ON WILLIAM J. BRUMLEY, ALLISON DONLEY, AND JAMEY ROAN

Mr. Craig Smith, ADH Attorney, extended appreciation to Dr. Mike Riddell, Dr. Brad Erney, and Dr. Darren Flamik for participating in the subcommittee hearings.

Mr. Smith presented the matter of William J. Brumley. Mr. Brumley was not personally present nor online. Mr. Smith stated that Mr. Brumley was given notice of the meeting by mail and email. Mr. Brumley is an EMT who has failed to complete patient care reports (PCR) as

required under the rules. These reports are necessary for both the patient to have a report of what occurred on a call as well as for service to submit billing. At the time of the hearing, Mr. Brumley had failed to complete five PCRs and the subcommittee recommended that his license be suspended until he has completed those as well as a fine of \$100 per report for a total of \$500. Dr. Darren Flamik moved, and Dr. Brad Erney seconded, to accept the recommendation as written. Motion carried by unanimous vote.

The next matter presented was Ms. Allison Donley, who was not personally present nor online. Mr. Smith stated that Ms. Donley was given notice by email and mail regarding the meeting. Ms. Donley is a nurse licensed with the Nursing Board and applied to become an EMT. At the time of her application, she was under disciplinary proceedings with the Nursing Board and failed to inform the Department in her application. She was brought before the subcommittee for falsifying her application. The subcommittee reviewed the evidence and recommend that Ms. Donley be put on probation that mirrors the same probation issued by the Nursing Board. If she completes the terms of her consent agreement with the Nursing Board, her probation will be lifted with the Department. Dr. Sue Weinstein moved, and Dr. Darren Flamik seconded, that the findings be accepted. Motion carried by unanimous vote.

The next matter presented was Mr. Jamey Roan, who was not personally present nor online. Mr. Smith stated that Mr. Roan was given notice by email and mail of the meeting. Mr. Roan is a paramedic who has had multiple issues with court regarding drug charges. He has appeared in drug court in Cross County multiple times and has had ongoing issues with them. At the time of the subcommittee meeting, Mr. Roan had an outstanding warrant for his arrest for failure to appear and has been listed as a habitual offender before the courts. The Department of Health proposed to the subcommittee, who is recommending for approval, that Mr. Roan's license which is currently under emergency suspension pursuant to the administrative powers of the Department of Health, continue suspension until adjudication of his charges are complete. If Mr. Roan is convicted of any charges that would disqualify him from a license, at which time his license could be suspended or revoked. This is only for continued suspension under the emergency powers. Dr. Darren Flamik moved, and Dr. Anthony Hui seconded, that the findings be accepted as written. Motion carried by unanimous vote.

MEDICAL IONIZING RADIATION LICENSURE COMMITTEE (MIRLC) PROPOSED FINDINGS OF FACTS, CONCLUSIONS OF LAW, AND ORDER ON VAN JOHNSON

Mr. Charles Thompson, ADH Managing Attorney, presented the findings of facts, conclusions of law, and order in the matter of Van Johnson that was heard before the Medical Ionizing Radiation Licensure Committee (MIRLC). Mr. Johnson was present with his attorney, Mr. Mike Mitchell. The matter involves MIRLC reviewing a waiver for a licensee to request from the licensing entity and finder of fact regarding such.

On or about April 28, 2020, Mr. Johnson was charged with aggravated assault on a family member, a Class D felony, and first-degree terroristic threatening, a Class D felony. On or about August 9, 2021, Mr. Johnson pled guilty to those charges.

A hearing was held in November 2022. Mr. Johnson did not provide any documentation other than his own verbal testimony. MIRLC found that Mr. Johnson had not started on the terms of

his probation which included community service and domestic violence classes. For those reasons, MIRLC denied the waiver.

After the MIRLC hearing and before the Board of Health meeting, Mr. Johnson provided documentation showing he started and completed a domestic violence course and his community service.

The record was reopened on January 24, 2023, for MIRLC to reconsider the waiver. There was no change in its vote, and MIRLC continues to recommend that a waiver be denied.

Mr. Mike Mitchell, attorney, stated they do not dispute the findings. He requested to make permanent the temporary waiver that the committee issued.

Dr. Perry Amerine asked Mr. Mitchell if there was anything the committee had done to limit Mr. Johnson's ability to make a living. Mr. Mitchell responded that Mr. Johnson is still practicing.

Dr. Amerine asked how long has it been since the incident occurred. Mr. Mitchell replied approximately three years. Mr. Johnson added he was arrested on February 12, 2020.

Dr. Balan Nair asked how long would the temporary waiver last. Mr. Mitchell replied that the Board's decision would determine that.

Dr. Phillip Gilmore asked, after reviewing the criminal judgment, if Mr. Johnson was on supervised probation until August of 2027, to which Mr. Johnson replied yes.

Mr. Clay Waliski asked whether the Board could impose anything punitive. Mr. Thompson stated the waiver is still in place until the Board's decision.

Dr. Phillip Gilmore asked if the Board could decide to put Mr. Johnson on probation until his criminal probation is satisfied. Mr. Thompson stated that is within the Board's authority.

Mr. Lane Crider asked for clarification regarding the original review by MIRLC and the imposition of the court conditions regarding Mr. Johnson's failure to go through the class and the community service, what was that timeframe. Mr. Thompson stated it was based on the seriousness of the convictions and his failure to complete his classes and community service.

Dr. Torres stated since the incident occurred in his hometown and the large service radius, he asked the Board to allow him to exclude himself from any discussion or vote, not wanting to jeopardize the outcome of the hearing. This was noted by the President.

Mr. Johnson spoke on his own behalf, stating that he was totally unaware of the stipulations that had to be done within the one-year timeframe. As soon as it was brought to his attention, he took care of it. He added that he was sorry that he did not read the paperwork about the community service and the anger management class.

Dr. Gilmore moved that the waiver be taken away but also that Mr. Johnson continue his criminal probation as issued by the court running through August of 2027, recommending a change from waiver to probation.

Dr. James Zini amended the motion to consider upon completion of the criminal court probation, that Mr. Johnson come back before the Board for conclusion. Dr. Zini said he wants to see what Mr. Johnson is doing in keeping his family together, learning from this experience, and his accountability presented back to the Board.

Mr. Crider asked what the Board's authority is to remove the waiver and it just be probation or whether the waiver needs to be extended to the end of probation. Mr. Thompson stated the Board should continue the waiver during the probation just because of the term waiver. There is no practical effect but to stay within statutory language it may be beneficial to grant the ongoing waiver for the course of his criminal probation.

Dr. Gilmore moved and Dr. Zini seconded to amend the motion accordingly.

Dr. Sue Weinstein asked if it would be a temporary or permanent waiver. Mr. Thompson stated the Board had the authority, but the statute is silent, it just mentions waiver. The Board can add stipulations to it, and it could continue until the end of his probation for his criminal charges. If he fails in some way during that period, he could be automatically revoked by operation of his failure to comply with the waiver.

Interim Secretary Mallory clarified the motion to state it is a temporary waiver until such time as the probation is over. Mr. Thompson added at which point the Board would decide on the final full waiver.

Dr. Gilmore moved to amend the motion as stated by Interim Secretary Mallory stated. Dr. Zini seconded. Motion carried with a recusal by Dr. Torres.

OTHER BUSINESS

REVISED ADH STRATEGIC PLAN 2020 – 2023

Dr. Bala Simon, ADH State Chronic Disease Director, gave an update on the amended Arkansas Department of Health Strategic Plan for the years 2020 – 2023. The priorities included vaccines and infectious diseases, access to healthcare, public health workforce development, health education, social determinants of health, addiction and mental health, maternal mortality, and obesity. The COVID pandemic necessitated the Department to modify the plan. The new ADH Strategic Plan development process will start sometime this Fall.

Dr. Brad Erney stated he would like to see cross collaboration with the Department of Health and different agencies to further promote the Department's mission. Dr. Simon stated Interim Secretary Mallory had already convened meetings to facilitate interagency collaboration.

Dr. Torres asked about expanding VFC (Vaccines for Children) providers. Dr. Simon stated that the Department is working with the Pharmacy Association regarding this matter.

PRESIDENT'S REPORT

Dr. Mike Riddell asked what Board members were interested in hearing about. He talked about having a library or presentation slide set of health matters that are vetted by the Health Department to present to the communities. He also talked about curbing methamphetamine deaths with a law enforcement tipline and seat belt usage during pregnancy. He stated he has asked that the meetings be moved back to the Freeway Medical Building for the remainder of the year.

SECRETARY'S REPORT

Interim Secretary Mallory stated the Department was extremely busy from January 11 to April 7 with the legislative session. It had a package of proposed legislation that was approved by the Governor's Office. Those acts can be reviewed in the Department's Friday Letter. Interim Secretary Mallory stated there were over 1400 bills introduced between the Senate and the House. Even though the Department has its own legislative package, everything that is introduced must be reviewed to see if there is something that affects the Department of Health. There is a team that does that. Each bill that affects the Department of Health must have an impact statement done. Those are given to our experts, so we know how it affects us. Interim Secretary Mallory recognized the people on that team--Laura Shue, Chief Counsel, and Matt Gilmore, Legislative Liaison. The legislators know them and there is a level of trust with the Department because of them. Other staff over there are the attorneys that you have already met who have been at the podium today. Two Acts had an Emergency Clause, one was for the Rural Emergency Hospitals, that was presented today, and the other removed abortion facility licensure. They adjourned April 7 but will be back to look at other business.

The meeting adjourned at 12:32 pm.



Dr. Mike Riddell, President
Arkansas State Board of Health

