

**QUARTERLY MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH**

October 22, 2015

MEMBERS PRESENT

Lawrence Braden, M.D., President
Jim Lambert, President-Elect
Nathaniel Smith, M.D., MPH, Secretary
Gary Bass, Pharm.D.
Miranda Childs Bebee, D.D.S. (via phone)
Patricia Bell, O.D.
Greg Bledsoe, M.D.
Glen "Eddie" Bryant, M.D.
Clark Fincher, M.D.
Beverly Foster, D.C.
George A. Harper, J.D.
Anthony N. Hui, M.D. (via phone)
Susan Jones, M.D.
Thomas Jones, R.S.
Mary Beth Ringgold
Catherine Tapp, MPH
Robbie Thomas Knight, Ph.D.
Peggy Walker, RN-BC, MSN, CADC (via phone)
Anika Whitfield, D.P.M.
Terry Yamauchi, M.D.
James Zini, D.O.

Member(s) Absent: (excused)

Larry Fritchman, D.V.M.
Alan Fortenberry, P.E.

GUESTS PRESENT

Joseph Bates, M.D., Deputy State Health Officer
Stephanie Williams, Deputy Director for Public Health Programs
Ann Purvis, Deputy Director for Administration
Namvar Zohoori, M.D., Deputy Science Officer
Appathurai Balamarugan, M.D., Medical Director/Associate Director for Science
Rick D. Hogan, General Counsel
Reginald A. Rogers, Deputy General Counsel
Elizabeth Harris, Deputy General Counsel
Leslie Lovett, Board of Health Liaison
Mike Wilson, EOC, Technical Manager
Kelli Kersey, Section Chief, Cosmetology and Massage Therapy
Greg Brown, Associate Branch Chief, Preparedness and Response
Xaiver Heard, Director, Human Resources
Renee Mallory, Director, Center for Health Protection
Glen Baker, M.D., Director, Public Health Lab
Connie Melton, Branch Chief, Health Systems Licensing & Regulation
Gary Wheeler, M.D., Senior Physician Specialist, Infectious Disease
Lindy Bollen, D.D.S., Director, Office of Oral Health
David Grimes, M.D., Medical Director, Family Health
Jennifer Dillaha, M.D. Medical Director, Immunizations
Robert Brech, Chief Financial Officer
Marisha DiCarlo, Ph.D., Director Health Communications
Michelle Smith, Ph.D, Director, Office of Minority Health
Vonda Houchin, M.D., Poinsett County Health Officer
Peter Kohler, Vice Chancellor, UAMS Northwest Campus

MEETING OF THE STATE BOARD OF HEALTH

The Quarterly Meeting of the Arkansas State Board of Health was held Thursday, October 22, 2015, at the Winthrop Rockefeller Institute in Oppello, Arkansas. President Braden asked those members participating by conference call to give their names. Miranda Childs Bebee, D.D.S., Anthony Hui, M.D., and Peggy Walker, RN-BC, responded. It was reported there was a quorum and the meeting was called to order at approximately 10:00 a.m.

President Braden recognized the passing of Dr. Leibovich and asked that the Board take a moment of silence to honor him.

APPROVAL OF MINUTES

President Braden entertained a motion for approval of the July 23, 2015 Quarterly Meeting minutes, the minutes of the special meetings held on September 2, 2015, and September 17, 2015. Mr. Harper made a motion to approve the minutes and Dr. Yamauchi seconded the motion. The motion passed and the minutes were approved as presented.

OLD BUSINESS

Proposed Rules and Regulations For Cosmetology In Arkansas

Kelli Kersey, Section Chief, Cosmetology and Massage Therapy, reported a public comment period was held for the Proposed Rules and Regulations for Cosmetology in Arkansas. Several comments from one individual were received. Those comments were discussed by the Cosmetology Technical Advisory Committee, and thirteen (13) changes were made, as described by the Summary presented to the Board.

A motion to approve the proposed rules was made by Ms. Tapp. The motion was seconded by Dr. Fincher and the motion carried as presented.

Final Approval of Rules and Regulations Pertaining to Post-Secondary Schools for Massage Therapy

Kelli Kersey, Section Chief, Cosmetology and Massage Therapy, reported that Act 1020 of 2015 required the State Board of Massage Therapy to approve a curriculum for Post-Secondary Massage Therapy Schools. The Rule change will require post-secondary schools to enroll only students with a high school diploma or equivalent. Those schools must also provide six-hundred (600) hours of approved curriculum and adopt a complaint process.

Schools may also obtain dual licensure if they enroll students who do not have a high school equivalent. However, they must ensure that only students with a high school diploma or the equivalent receive Title VI funds.

Mr. Harper made a motion to approve the final Rules and Regulations Pertaining to the Post-Secondary Schools for Massage Therapy. Ms. Tapp seconded the motion and it carried as presented.

**Final Approval of Rules and Regulations
for Nursing Home Residents and Employee Immunization Law**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, asked for final approval of the Rules and Regulations for Nursing Home Residents and Employee Immunization Law.

Act 1051 of 2015 changed the requirement for the Arkansas Department of Health (ADH) to provide pneumococcal and influenza vaccines to residents and influenza vaccine to employees when there is a third-party pay source available. The program also made changes to the exemption requirements to meet the statutory requirements. The rule has been through public comment and no comments were received.

A motion to approve the rules as presented was made by Mr. Harper and seconded by Dr. Bryant. The motion carried with abstention by Dr. Yamauchi.

**Final Approval of Rules and Regulations
Pertaining to Immunization Reporting**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, requested final approval of the Rules and Regulations Pertaining to Immunization Reporting. The Rule change was being made pursuant to Act 541 of 2015. The rule had been taken to the legislative committee and had been through the Governor's approval process. The amendment brings adult immunization reporting in line with how all other electronic medical records in the state are handled.

Dr. Fincher moved for approval of the rule change and Dr. Hui seconded. The motion passed as presented.

**Proposed Rules and Regulations
for Emergency Medical Services**

Greg Brown, Associate Branch Chief, Preparedness and Response, reported that most of the changes presented had already been approved by the Board and passed. However, there were some new changes. Mr. Brown explained that those changes included definitions, adding some language and explanations, and updates and changes to educational and equipment requirements. Under Section V.C. 3.a. 3. EMT Permitted Ambulances; the word licensed was added back after being taken out as an oversight. This change was approved by the Arkansas Ambulance Association and Arkansas EMT Association. All changes made under Section IX. C.1-2C. General Licensure Renewal Standards were based on recommendations by the Arkansas EMT Association, Arkansas Ambulance Association, EMS Training Committee and approved by the EMS Governor's Advisory Committee.

A motion was made by Dr. Fincher to approve the rules. It was seconded by Dr. Zini and passed as presented.

**Final Approval of Rules and Regulations for the Advisory Board
of Interpreters Between Hearing Individuals and Individuals Who are Deaf, Deafblind,
Hard of Hearing, and Oral Deaf**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, stated that the revisions presented were first approved by the Board of Health for promulgation in April 2015. Comments were received and from those comments one change was made. That change was to add the language “to the extent the person filing the complaint is able.” This change clarifies that all complaints will be accepted, even if they don’t have specific information listed in the Regulation. The change was a clarifying change and is not consider substantive.

Dr. Zini moved for approval of the rules and regulations. Mr. Harper seconded the motion and it passed as presented.

**Final Approval of the Rules and Regulations
Pertaining to the List of Controlled Substances**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, reported that back in April the Department asked for permission to begin scheduling of Mitragynine, 7-hydroxymitragynine, Alpha-pyrrolidindpentiophenone and Suvorexant. The Controlled Substance list was amendmed and taken through a public comment period. No comments were made during the public comment period. The four drugs were approved by the Legislative Committee and the Governor.

A motion to approve the proposed rules and regulations was made by Dr. Bass. The motion was seconded by Dr. Smith and carried.

NEW BUSINESS

**Proposed Amendments to the Rules and Regulations
Pertaining to the Arkansas Prescription Drug Monitoring Program**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, stated that Act 1208 and 901 of 2015 were passed and changed the Prescription Drug Monitoring Program (PDMP). The first change was “that you may notify professional licensing boards if it is believed that a subscriber is dispensing in a manner that may represent misuse or abuse”. However, that must be after the licensing board has approved parameters for that misuse. Second, was the delegation of the dispenser or prescriber; that they may delegate access to the PDMP. Third, was to create the Certified Law Enforcement Prescription Drug Investigators. This certified law enforcement agent can obtain access to the PDMP by using an investigative case number assigned and his certification number. Fourth, was to notify the DEA if information appears to indicate that a person may be obtaining prescriptions in a manner of misuse or abuse. Lastly, the PDMP will develop algorithms to alert practitioners if a patient is being prescribed opioids by more than three physicians within any thirty (30) day period, if funding is available.

Some discussion regarding the amendments took place. Dr. Zini made a motion to approve the amendments to the Arkansas Prescription Drug Monitoring Program. Dr. Fincher seconded the motion and it passed as presented.

**Proposed Rules and Regulations Pertaining to
Public Access to Auto-Injectable Epinephrine**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, stated Act 1108 of 2015 required this rule change. It expands the ability to use Auto-Injectable Epinephrine to laypersons who receive appropriate training. The Department will issue certificates to persons eligible to administer the medication.

A motion for approval of the proposed rules was made by Dr. Bass and seconded by Mr. Lambert. The motion carried as presented.

Arkansas Department of Health v. Blytheville School of Cosmetology

Elizabeth Harris, J.D., MPH, Deputy General Counsel, reported to the Board that this was an appeal from a hearing before the Cosmetology Technical Advisory Committee (CTAC). In May the Department was contacted by one of the students of Blytheville School of Cosmetology to make a complaint regarding hours applied. After investigating and asking Ms. Brown, the owner of the school, to provide information that was never provided the hearing was set. It was originally set to come before the Board in July, however, upon receiving notification from Ms. Brown that she would be out of the Country, it was moved to the October meeting.

Ms. Harris recounted that Ms. Brown stated “that she could not provide documentation due to numerous things that had happened.” The CTAC found that she was in violation of Rule 5.1 for not cooperating with the investigation and made the finding against her.

Dr. Fincher stated that he did see a letter attached from Ms. Brown asking for the decision to be reversed but did not see any additional information provided by Ms. Brown. That was confirmed to be the only documentation she submitted regarding an appeal.

A motion to accept the recommendation of the CTAC was approved by Mr. Harper and seconded by Dr. Fincher.

After the vote passed Ms. Brown arrived at the meeting, therefore, the Board voted to place the motion back on the table for further discussion and to allow Ms. Brown to speak. Mr. Harper made a motion that the vote be expunged and placed back on the table. A second was made by Dr. Fincher.

Mr. Hogan asked if Ms. Brown had any information to add to support why the recommendation should be reversed. Ms. Brown stated that she had been the owner of Blytheville School of Cosmetology since 2010. She said that when they came to inspect the records she was unable to produce them because the person who runs the office had left for the day with the keys. She then says she received a certified letter, a month or two later, asking for the records. She stated that

she complied with that letter. Then a month or so later they asked her to fax over the documentation so she did. However, she was told some of it was illegible. She was then asked to scan each page of the file and email. She told them that was a lot to send but she had it and would. She said that the letter received stated "Everything was okay". Ms. Brown reported to the Board that she complied with a certificated letter and was not going to comply with what she was being told via email by the Cosmetology Division. The Division told her if she did not comply then a hearing would be set before the Advisory Board.

Mr. Harper asked what the penalty was. Mr. Hogan stated that it was a monetary penalty of \$500.00 with no action against the licensee.

Mr. Harper asked if the inspectors with the Department had a chance to go back and look at the materials in order to determine if the original complaint was valid. Ms. Brown stated that she ended up taking the information requested to Little Rock. However, Ms. Kersey stated that those records were not the records that she requested.

A discussion then ensued on whether or not a letter being mailed or an email had more merit. That point was struck when it was found that there was no evidence that Ms. Brown ever received a letter stating "everything was okay."

Mr. Harper asked, if it was correct that since the initial investigation there had been additional investigation that showed that it was still not cleared up. Mr. Hogan confirmed that was correct.

Ms. Brown later stated she would not accept requests via email because she does not check them. She would only accept requests via certified letters.

A motion to refer the appeal back to the CTAC was made by Mr. Harper and seconded by Dr. Whitfield. The motion passed.

Approval of Consent Request from the Arkansas Central Cancer Registry

Rick D. Hogan, J.D., M.P.H., General Counsel, reported on the Approval of Consent Requests from the Arkansas Central Cancer Registry (ACCR). He stated that all four consent requests had been through the IRB process. Mr. Hogan then turned it over to Dr. Fincher for further discussion.

Dr. Fincher stated that the Board of Health Subcommittee and the ACCR recommend that the Board of Health approve the four consent requests.

A motion to approve access for the four studies was made by Dr. Fincher and seconded by Ms. Tapp. The motion passed as presented.

A discussion ensued regarding how to handle Passive Consent Requests in the future, due to the time it takes for the Board's approval. Dr. Smith added that these studies are first reviewed by the Science Advisory Committee (SAC) of the Health Department before they are given to the

Board. It was suggested that all Passive Consent Requests, which are for non-identifiable data, that are reviewed and approved by the SAC, be taken to the full Board once a year.

Dr. Fincher made a motion that Passive Consent Requests be taken to the full Board once a year instead of each being taken to the Subcommittee. Dr. Smith seconded the motion and it passed.

**Proposed Findings of Fact, Conclusions of
Law and Order to Clay County Regional Water**

Reginald Rogers, J.D., Deputy General Counsel, reported that the Administrative Hearings Committee ruled unanimously in favor of adoption of the ADH Staff's recommendation that: (a) plans must be submitted to ADH for review and approval within (45) days of the final Board of Health's Order; (b) Fluoridation equipment must be installed and operating within ninety (90) days of plan approval; and (c) If any of these milestones are not met, the system be assessed a fine of \$500.00 per week until this requirements are met.

Mr. Roger asked the Board to approve the recommendation of the Administrative Hearings Committee.

Mr. Harper made a motion to approve the recommendations and Dr. Zini seconded. The motion passed.

Proposed Appointment of the Johnson County Health Officer

Joe Bates, M.D., Chief Science Officer, requested that the Board approve the nomination of Dr. Sarah Woodruff as Johnson County Health Officer. Dr. Woodruff was nominated by Judge Houston and local Johnson County health administrators.

Mr. Harper made a motion to appoint Dr. Woodruff and Dr. Susan Jones seconded the motion. It carried as presented.

**Proposed Appointment to the Massage
Therapy Technical Advisory Committee**

Kelli Kersey, Section Chief, Cosmetology and Massage Therapy, asked the Board for approval of two appointments to the Massage Therapy Technical Advisory Committee (MTTAC). She mentioned that the two prior appointments the Board voted on did not take the positions. Therefore, she asked the Board for new approval of Alan Anderson for the Public Member and George Hrenchir for the Licensee position.

Ms. Tapp made a motion approve the appointments and Dr. Susan Jones seconded. The motion passed as presented.

OTHER BUSINESS

ADH Strategic Plan Update

Stephanie Williams, Deputy Director for Public Health Programs, gave an update on the Strategic Plan for the Arkansas Department of Health for the next four years. She also reported on the launch of the new healthyactive.org website.

ADH In Home Services Update

Ann Purvis, Deputy Director for Administration, gave an update to the Board on the transition of the In Home Services program from the Department.

Location of the 2016 Board of Health Meeting and Workshop

Rick D. Hogan, J.D., M.P.H., General Counsel, asked that a vote be taken to determine the 2016 Board of Health Meeting and Workshop location. A vote was taken and the location will be announced at a later date.

President's Report

Dr. Braden closed the meeting by stating how proud he was to be a part of the Board and of the Department for all it does to better the health of Arkansans.

Director's Report

Dr. Smith made a brief report. First, stating that Dr. Braden was to be honored at a special luncheon on November 18, 2015, where he and others would be recognized as "Health Care Heroes." Dr. Riddell was also to be honored for his contributions in Women's Health.

Second, Dr. Smith read the Resolution in honor of Dr. Marvin Leibovich for placement in the minutes and asked for adoption of the resolution by the Board. It read as follows:

ARKANSAS STATE BOARD OF HEALTH Resolution Honoring the Life and Work of Marvin Leibovich, M.D.

Whereas, Marvin Leibovich, M.D., was nationally recognized in the field of Emergency Medicine. He received a *Meritorious Service Award* from the American College of Emergency Physicians, among many other national and state awards.

Whereas, in 1981, Dr. Leibovich developed Arkansas' first aeromedical helicopter program by obtaining the support of the Little Rock Air Force Base's helicopter squadron to fly critically ill or injured patients to tertiary care hospitals. In 1984, he began a hospital based EMS helicopter program, MedFlight, which has aided nearly thousands of Arkansans since its creation.

Whereas, while treating an injured LRPD SWAT team member in 1991, Dr. Leibovich saw a need for on-site emergency medical personnel during SWAT operations. In May

1996, he graduated from the Little Rock Police Academy and worked with the LRPD SWAT until December 2014. In 1997, he was awarded the *Fraternal Order of Police's Humanitarian Award* for saving the life of a fellow officer.

Whereas, in 2006, Dr. Leibovich became the Chair of the Department of Emergency Medicine at the University of Arkansas for Medical Sciences. He also received a gubernatorial appointment to the Arkansas State Board of Health. Dr. Leibovich has served as chairman of the Governor's Advisory Council for Emergency Medical Services and co-chairman of the Governor's Trauma Advisory Council, all of which advise the Arkansas State Board of Health.

Whereas, Dr. Leibovich died after a lengthy battle with colon cancer on the morning of October 5, 2015.

Whereas, in every sense of the word Dr. Marvin Leibovich was a pioneer in Emergency Medicine in the State of Arkansas and broke many barriers by connecting the first Statewide Trauma System with law enforcement, emergency medical response and tertiary care.

BE IT RESOLVED that, in recognition of a lifetime of achievement in Emergency Medicine and public service to public health, the Arkansas State Board of Health hereby acknowledges the work and life of Dr. Marvin Leibovich.

A motion of acceptance was made by Dr. Zini and seconded by Dr. Whitfield. The resolution carried.

Many kind words were said of Dr. Leibovich and condolences given for his family.

Lastly, Dr. Braden was thanked for his service as President of the Board for 2015.

Public Comments

There were no public comments to be made.

There was no further business to report and the meeting was adjourned at approximately 12:10 p.m.

Respectfully submitted,



Nathaniel Smith, M.D., MPH
Director and State Health Officer