

**QUARTERLY MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH
January 24, 2013**

MEMBERS PRESENT

George Harper, President
Paul K. Halverson, DrPH, Secretary
Miranda Childs-Beebe, D.D.S., President Elect
Lawrence Braden, M.D.
Glen "Eddie" Bryant, M.D.
Alan Fortenberry, P.E.
Larry Fritchman, D.V.M.
Susan Jones, M.D. (via phone)
Tom Jones, R.S.
Jim Lambert (via phone)
Lynda Lehing
John R. Page, P.D.
Alexander Registre, Sr., D.C.
Mary Beth Ringgold
Rev. Dwight Townsend (via phone)
Peggy Walker, RN-BC, MSN, CADC
Patricia Westfall-Elsberry, O.D.
Anika Whitfield, D.P.M. (via phone)
Terry Yamauchi, M.D.
Dr. James Zini, D.O. (via phone)

GUESTS PRESENT

Dr. Joe Bates, Deputy State Public Health Officer
Donnie Smith, Director, Center for Health Protection
Dr. Nate Smith, Deputy Director for Public Health Programs
Randy Lee, Director CLPH
Xavier Heard, Human Resources Director
John Senner, Director, Center for Public Health Practice
Stephanie Williams, Director, Center for Health Advancement
Bryan Whitaker, D.D.S, Director Oral Health
Terry Paul, Env. Health Branch Chief
Katheryn Hargis, Governmental Affairs Policy Director
Renee Mallory, Branch Chief, Health System
Bernie Beville, Section Chief, Radiation Control
James Myatt, P.D., Chief Pharmacy Branch
Laura Bailey, Branch Chief, Alcohol Testing
Becky Adams, ADH
Kerry Krell, ADH Public Information Specialist
Lance Jones, ADH Chief Engineer
Glenn Greenway, ADH Engineer Supervisor
Denise Robertson, Pharmacist
Lynn Davis, Health Physicist
Abby Holt, Epidemiologist
Rick D. Hogan, General Counsel
Reginald Rogers, Deputy General Counsel
Mike Wilson, EOC Technical Manager
Nancy Cox, Legal Services

MEMBERS ABSENT (excused)

Clark Fincher, M.D.
Anthony N. Hui, M.D.
Marvin Leibovich, M.D.
Joe Thompson, M.D.

QUARTERLY MEETING OF THE STATE BOARD OF HEALTH

The January Quarterly Meeting of the Arkansas State Board of Health was held Thursday, January 24, 2013 in the Charles Hughes Board Room at the Freeway Medical Building in Little Rock, Arkansas. Dr. Halverson asked those members participating by conference call to give their names. Dr. Susan Jones, Jim Lambert, Dr. James Zini and Dr. Alexander Rejistre responded and Dr. Halverson reported there was a quorum. President Harper called the meeting to order at approximately 10:00 a.m.

APPROVAL OF MINUTES

President Harper entertained a motion for approval of the minutes of the November 8, 2012, quarterly meeting. Mr. Fortenberry made a motion to approve the minutes. Dr. Page seconded the motion and the minutes were approved as presented.

Nominating Committee Report

Dr. Eddie Bryant reported that on December 6th the Nominating Committee communicated by conference call to consider the nomination of Dr. Miranda Childs-Bebee as President-Elect of the Board for 2013. Dr. Bryant moved that the Board accept the nomination of the committee; Mary Beth Ringgold seconded the motion and the motion carried.

OLD BUSINESS

Final Adoption of Proposed Revisions to the Arkansas Regulations for Alcohol Testing

Ms. Laura Bailey, Branch Chief, Alcohol Testing, reported that she was before the Board for final adoption of the proposed revisions to the rules. All the necessary steps have been completed. Dr. Page made a motion to adopt the proposed revisions. Dr. Childs-Bebee seconded the motion and the motion carried.

Proposed Adoption of Rules and Regulations Pertaining To Controlled Substances

Mr. Rick Hogan, General Counsel, stated that this rule is before the Board again due to changes after going through the administrative process. These have been incorporated and we are now coming back for approval to initiate the administrative process again because the changes were substantive in nature. Dr. Fritchman asked what the changes were. Dr. James Myatt, P.D., Chief, Pharmacy Services and Drug Control, stated the changes related to selling pseudoephedrine products over the counter and included suggestions from the Pharmacy Board regarding this. There were some minor wording changes from the DEA concerning controlled drugs.

Dr. Fritchman stated he had concerns that there are some veterinarians in the rural areas being dragged screaming and yelling into the 21st century who are not computerized. I am not sure

what that is going to do with the reporting for veterinarians. The second concern I have is, as a profession, we don't prescribe a lot of scheduled drugs. The major drugs that we prescribe are primarily phenobarbital which is used for the control of seizures in dogs. Beyond that, there's not much in the way of scheduled drugs that we prescribe. As far as the problems that you have in human medicine, we don't get much in the way of shoppers trying to get more. We have a one-on-one relationship with the owners and they strictly refill for their animals, and we keep pretty close control of that. When we prescribe for a non-client, it is usually somebody from out of state or out of town who need a few to hold them over until they get home but we never prescribe a full refill. I don't know where you put us in that, but I think that due to the fact that a lot of my colleagues, particularly in the rural areas, are not computerized.

President Harper asked for a motion to begin the administrative process again. Dr. Page made the motion; Dr. Childs-Bebee seconded and the motion carried.

Final Adoption of Rules and Regulations Pertaining to Arkansas Prescription Drug Monitoring Program

Dr. Myatt responded to Dr. Fritchman's concerns by stating that he participated in a conference call recently with the provider and also met with the advisory committee veterinarian, Dr. Weinstein, regarding their concerns and we are working through those at the present time. Our provider is Health Information Designs. Some states require veterinarians to report and based on that, we are doing research to make a determination as to the easiest way we can do this in this state, based on Act 304.

Mr. Hogan gave a little background on the rules and regulations and stated there was a public hearing on January 8th and the comments that were received have been addressed, but because the legislature is in session, we have not received review of the legislative subcommittees. This is out of order for us but because the law mandates that this program go into effect on March 1st, we have to go forward with it. Today we are asking the Board to adopt the regulations contingent upon there being any particular item that may arise during the review process by the legislative committees.

Dr. Yamauchi asked if the adoption had in it a statement of contingency or is that automatic with anything we approve. Mr. Hogan stated the motion would reflect that, and there is nothing about the regulation that would be controversial in terms of not reflecting what the statute says.

President Harper asked for a motion for final adoption of the rules pertaining to prescription drugs subject to ultimately receiving approval from the appropriate legislative committees. A motion was made, and Dr. Childs-Bebee seconded the motion. Mr. Fortenberry stated he understood that it will not come before this Board again, and Mr. Hogan responded that it would not; this will be the final approval, unless one of the legislative committees has a question that causes us to bring it back. Mr. Fortenberry asked if the rules that are being voted on at this time address Dr. Fritchman's question. Mr. Hogan stated that the statute reflects that vets have to be included under the definition of patients and physicians, and Dr. Fritchman's question is more practical in nature. "How are you going to make it work for these people who don't have the equipment to do so?" We are working through that on contracts and agreements with the

vendors to make sure that is incorporated. That would go more to a contract issue, not to the substance of the rule itself.

Dr. Halverson informed the Board members that Dr. Leibovich had asked that he express his strong support of this motion. The one request that he made was that he wanted to urge that we not advertise or make generally known the particulars around when the database is updated. Initially we were talking about updating this on a weekly basis, and Dr. Leibovich's point was that we wouldn't want those people who might be prone to abuse these scheduled drugs to know that, for example, the update happens on Friday so that they can gain the system. Donnie Smith reminded me that part of the implementation of this would be that the full six months up-data will be loaded into the system so it won't be a blank data base when it is started, but Dr. Leibovich's point is well made. We don't want people to be gaining the system.

Dr. Zini asked how the Prescription Drug Monitoring Advisory Committee would function. Will it be meeting regularly or upon request? Dr. Myatt responded by stating it will be quarterly; the next meeting is scheduled for March. Mr. Hogan stated that Dr. Leibovich is the representative of the Board on that committee.

Dr. Halverson thanked Jim Myatt for his leadership in pulling this altogether. It is going to be a great program for Arkansas.

President Harper asked for a vote on the motion and second before the Board. A vote was taken and the motion passed.

NEW BUSINESS

Request for Exemption for Central Arkansas Radiation Therapy Institute

Mr. Bernie Bevill, Section Chief, Radiation Control, stated that CARTI has asked that they receive an exemption for a radiation monitor requirement where we require that monitors have back up power. CARTI advises that when they have no electricity, their medical accelerators do not work and without power, their accelerator cannot produce radiation. We agree with CARTI's assessment that no power, no radiation, therefore there is nothing to detect and it would not make sense to require a back-up system. We are working on revisions that will modify our medical accelerator, our medical x-ray therapy requirements and this exemption matter will not be brought before the Board again.

President Harper asked Mr. Bevill if this Board has the authority to exempt someone from an existing rule. Mr. Bevill said it did. Our regulations are the Board of Health's regulations and as section chief I cannot exempt people from our regulations. If a request comes for an exemption, this exemption comes before the Board of Health.

Dr. Bryant asked if there was anyone else in the state in a similar situation. Mr. Bevill stated there are around 24 other medical accelerator licensees. In our licensure process this is something they have gone through and taken care of historically. Dr. Bryant stated that in all

fairness, anyone else in the same situation should be able to get that exemption without much fanfare. Mr. Hogan stated that this is an unusual situation, and if there were an occasion for an exemption Mr. Bevill had granted those in the past. In looking at the Board's regulations, it was determined that legally this exemption should come from the Board. President Harper asked does the rule that the Board adopt have a provision in it for an exemption. Mr. Hogan stated that this would do away with the need for an exemption of this matter. The revisions in the rules will subsume the exemption, so it basically becomes a moot point for future exemptions in this particular area based on the change in the rules.

Dr. Halverson asked Mr. Hogan if it would be in order for the Board to approve this exception and to authorize the department to grant additional requests for exemptions if a like matter were to arise. Mr. Hogan responded that we don't want to make an exception solely for one party when in fact this does apply to anyone in a like situation.

Dr. Yamauchi asked if there was no way that radiation could continue if the electricity went off. Mr. Bevill stated that that was the case with medical accelerators.

President Harper asked for a motion to approve an exemption for CARTI and for others similarly situated under the circumstances described by Mr. Bevill. Dr. Bryant so moved, Dr. Page seconded the motion and the motion passed.

**Proposed Repeal of Rules and Regulations Pertaining
To Food Stores, Markets, and Warehouses**

Mr. Terry Paul, Environmental Health Branch Chief, stated that the basic story on this rule is that it has been incorporated into our food service establishment rules and regulations, as well as the good manufacturing processes. We need to pull these rules down and get them out of the way. President Harper asked if there was a motion to repeal these rules. Mr. Fortenberry so moved, Dr. Page seconded and the motion passed.

**Proposed Repeal of Rules and Regulations Pertaining
To Frozen Food Locker Plants**

Mr. Terry Paul, Environmental Health Branch Chief, stated that the basic story is that it has been incorporated into our food service establishment rules and regulations, as well as the good manufacturing processes. These are places you could store your home grown meat. We need to pull these rules down and get them out of the way. President Harper asked if there was a motion to repeal these rules. Mr. Tom Jones so moved, Dr. Westfall-Elsberry seconded and the motion passed.

**Proposed Repeal of Rules and Regulations Pertaining to
Frozen Foods in Retail Stores**

Mr. Terry Paul, Environmental Health Branch Chief, stated that these have also been incorporated in other food regulations. We need to pull these rules down and get them out of the way. President Harper asked if there was a motion to repeal these rules. Mr. Fortenberry so moved, Dr. Childs-Bebee seconded and the motion passed.

**Proposed Repeal of Rules and Regulations Pertaining
To Shellfish**

Mr. Terry Paul, Environmental Health Branch Chief, stated that these are included in our current food regulations. Last year they were updated with the federal food code. President Harper asked if there was a motion to repeal the shellfish rules. Mr. Fortenberry so moved, Dr. Page seconded and the motion passed.

Proposed Revisions to the 2006 State Plumbing Code

Mr. Bob Higginbottom, Director, Plumbing & Natural Gas Section, stated that currently the federal safe drinking water law allows plumbing pipes, fittings and fixtures that carry drinking water to have as much as 8% lead. The federal laws have changed as a result of January, 2011 and the new law will become effective in January of 2014, to lower that amount from 8% to 0.25%. Because of this, there are changes that must be made in the plumbing code. Today I am requesting permission to proceed with rule adoption and make these changes in order for us to stay in compliance with the Federal Safe Drinking Water Act. Dr. Zini asked if your system had to be repaired, would this require only bringing the repair up to standard or would the whole system have to be changed. Mr. Higginbottom stated only that portion of the system that had to be repaired.

Dr. Page made a motion to proceed with the administrative process. Mr. Fortenberry seconded the motion and the motion carried.

**Appointment of Independence County and Lonoke County
Health Officers**

Mr. Hogan presented the names of two county health officers who have been recommended for appointment; Dr. Jason Paxton, Independence County, and Dr. Jason Merrick, Lonoke County. They both meet the requirements of the statute, and I would ask the Board to move for the appointment of Dr. Paxton as the Independence County Health Officer and Dr. Merrick as the Lonoke County Health Officer. Dr. Page made a motion to approve the appointment of Dr. Paxton and Dr. Merrick. Dr. Zini seconded the motion and the motion carried.

Proposed Findings of Fact – Watson Chapel Water

Mr. Hogan stated there was no action necessary on this item. This matter will be taken up at the next Board meeting.

Proposed Findings of Fact – Care One EMS

Mr. Hogan also stated there was no action necessary on this item. Care One EMS requested a continuance of the hearing once they retained legal counsel. A tentative date of February 19, 2013 has been set for a hearing.

OTHER BUSINESS

Approval of Per Diem of BOH Members

Ms. Peggy Walker made the motion that the Arkansas State Board of Health authorize expense reimbursement for the performance of official Board duties to the allowable amount authorized by law in accordance with Ark. Code Ann. § 25-16-902(a) for the calendar year 2013. Dr. Westfall-Elsberry seconded the motion and the motion carried.

“A Longitudinal Examination of Cancer Mortality in Arkansas”

Dr. Joe Bates, Deputy State Health Officer and Chief Science Officer, gave a short presentation on what is happening with cancer in our state. In January of this year the National Cancer Institute published that cancer deaths in the U.S. were going down. In 1990 cancer deaths peaked and have been coming down for both male and female since about 1990.

Coronary heart disease, stroke and cancer are the most common causes of deaths in Arkansas. A person of any age in Arkansas is more likely to die of cancer today than they were in 1968. Prostate cancer in men is the second leading cause of death in Arkansas; we're making progress with colorectal cancer. Lung cancer is our number one cause of death. We're not making a lot of progress in decreasing tobacco use. Approximately 23% of adults in Arkansas smoke, one in 4 or 5 people.

Cancer of the colon is the second leading cause of cancer deaths. It is one that theoretically should almost be preventable. The Affordable Care Act provides for a free colonoscopy every ten years beginning at age 50.

The human papilloma virus vaccine is a very effective vaccine and Arkansas has one of the lowest uptake rates of any state. This Board needs to talk about what we can do about increasing the use of this vaccine.

The second leading risk factor for cancer, after tobacco, is obesity. We are not doing very well in preventing that either, and that may account for the plateauing effect, that and the lack of health insurance are the two things that are contributing to Arkansas' not keeping up with the nation in cancer deaths.

Dr. Bryant commented that colonoscopies are not free, they are shared risk now, and each of us pays for those as a shared risk pool.

PRESIDENT'S REPORT

None.

DIRECTOR'S REPORT

Dr. Halverson thanked Lynda Lehing, a retiring Board member, for her service as a member of the Board representing the Arkansas Public Health Association. The governor is in the process of confirming new appointments and reappointments.

Dr. Halverson reported that our flu activity is very pronounced. Yesterday we had reported 18 deaths due to flu in our state. I'm proud that our Arkansas policies have promoted a substantial uptake in flu vaccination. We have mandated for a long time the vaccination of long term care facility patients and the employees of long term care facilities. We have been doing mass vaccine administrations in all counties and that continues to be an important strategy. We are seeing an uptake of opportunities in retail pharmacies. Another important strategy that we believe is very successful is the vaccine administration in our public and private schools of students as well as staff and teachers.

I have appointed a committee composed of pediatricians, neonatologists and representatives from hospitals, and I have asked Dr. Jon Bates, president of Children's Hospital, to act as the chair, in an effort to bring both to the Board and potentially to create legislation to authorize the designation of nurseries, including neonatal intensive care units. Arkansas is one of the few states that do not have state designated newborn nurseries. In our review of neonatal deaths and infant mortality generally, we need to do a better job across the board by reducing non-medically indicated early deliveries, as well as to improving the care that newborns receive. I have asked Dr. Nate Smith to serve as our liaison to a committee of experts across the state to look at this issue. The work of this group is ongoing; they have not reached a conclusion. Our primary interest is improving the care of newborns in our state and the safety and security of the mothers as well.

We are in the process of implementing an electronic medical records system as well as a new immunization registry program. Both are necessary because of the modernization of our health system and the role that the Health Department plays as an encourager and regulator as well as a provider since we still provide a substantial number of immunizations and we are involved in the provision of preventive services.

We don't have major legislation this session. There are three broad areas of legislation that we are proposing; one is injury prevention, and that includes the 880 booster seat 2-year rear facing. The idea would be to increase the use of booster seats in older children. The recommendation from the National Highway & Traffic Safety Administration is that these booster seats be used in children up to 8 years or 80 pounds, and that rear facing child safety seats be used to age 2 as directed by the American Academy of Pediatrics.

There is strong evidence to support the implementation of an all rider motorcycle helmet law but it is a policy question that we will need to weigh. Twenty states already have this law. We are

interested in making sure that bicycle riders 17 and younger use helmets. There is strong evidence to support the protective effect of bicycle helmets in our children and we know that bicycle helmets save lives, and that is part of our legislative package.

We still have some tobacco exemptions that are permitted in the law and we need to reduce these exemptions because there is no safe level of tobacco. Many bar owners that I have spoken to are very interested in having this exemption closed because they would like to see a level playing field. We know the argument related to reduction in business has been proven not to be necessarily accurate.

We need to make changes related to psychiatric facilities. We have a provision in the law that has allowed psychiatric facilities to allow smoking and we will move to reduce that exemption. We want to close the loophole that allows E-Cigarettes to be sold to minors. We may not know what is in the E-Cigarette solution but we know it is an effective nicotine delivery device and we want to limit E-Cigarette sales to minors. That will be a bill that will be introduced.

There are some miscellaneous bills that are more technical in nature; one related to a laboratory and clinical service billing for the Health Department that would allow direct billing for laboratory services as well as the ability for the Health Department to bill at prevailing Medicaid rates relating to our immunization services and other services.

Regarding cancer registry research, we need to provide the ability for researchers to use information with appropriate privacy protections.

We want to reinstate the minimum qualifications for the State Health Officer and the Board's role, again regaining the Board's role in the selection and affirmation of the State Health Officer. That will also be part of the package, and it comes with the Governor's support and endorsement.

President Harper asked that the Department consider making available to the Board members a bullet point statement about the Department's position on the Medicaid Expansion. Dr. Halverson said he would work with Katheryn Hargis, our legislative liaison, and would get something out to the members. Dr. Yamauchi suggested that it would be good to have a statement and that it should be worded in such a way that we don't commit ourselves to something that everybody in the Health Department doesn't agree to.

Dr. Halverson reminded the members that this is a very important year for public health in Arkansas. February 26th will be the 100 year anniversary of the Board of Health. There will be a ceremony at the capitol to commemorate and celebrate the 100 years of the Board of Health's existence.

Dr. Halverson mentioned some of the ramifications of the actions taken by the Board – the specificity of the law on the designer drug K-2 is being challenged. We believe that it is sufficiently specific, but people will challenge these various laws, and I wanted you to know that our staff is ably representing the Board in these challenges.

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President Harper asked if there was any other business to come before the Board. There being none, Dr. Page made a motion to adjourn.

The meeting was adjourned at 11:55 a.m.

Respectfully submitted,

Paul K. Halverson, DrPH, FACHE
Director and State Health Officer