

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

July 28, 2016

MEMBERS PRESENT

Jim Lambert, President
Terry Yamauchi, M.D., President Elect
Nathaniel Smith, M.D., MPH, Secretary
Perry Amerine, O.D.
Gary Bass, Pharm.D.
Miranda Childs-Beebe, D.D.S. (via phone)
Greg Bledsoe, M.D.
Clark Fincher, M.D.
Alan Fortenberry, P.E.
Beverly Foster, D.C. (via phone)
George A. Harper, J.D.
Anthony N. Hui, M.D.
Lee Johnson, M.D.
Susan Jones, M.D. (via phone)
Mary Beth Ringgold
Robbie Thomas Knight, Ph.D. (via phone)
Catherine Tapp, MPH
Peggy Walker, RN-BC, MSN, CADC
Susan Weinstein, DVM, MPH
Anika Whitfield, D.P.M.
James Zini, D.O.

MEMBERS ABSENT (Excused)

Lawrence Braden, M.D.
Glen "Eddie" Bryant, M.D.
Thomas Jones, R.S.

GUESTS PRESENT

Stephanie Williams, Deputy Director for Public Health Programs
Robert Brech, General Counsel
Reginald A. Rogers, Deputy General Counsel
Elizabeth Harris, Deputy General Counsel
Glen Baker, M.D., Director, Public Health Lab
Don Adams, Center Dir. for Local Public Health
Mike Wilson, EOC, Technical Manager
Kelli Kersey, Section Chief, Cosmetology and Massage Therapy
Bob Higginbottom, Dir., Protective Health Codes
Xavier Heard, Director, Human Resources
Renee Mallory, Center Dir. for Health Protection
Connie Melton, Branch Chief, Health Systems Licensing & Regulation
Shirley Louie, State Registrar/Center Director
James Myatt, PD, Pharmacy Services Branch Chief
Namvar Zohoori, MD, Deputy Chief Science Officer
Terry Paul, Environmental Health Branch Chief
Debby Taylor, Women's Health Section Chief
Patti Scott, DNP, RN, Dir. Health Advancement
Jeff Stone, P.E., Dir. Engineering Section
Ron Brown, Epidemiologist, AR Cancer Registry
Jared Kibbey, Senior Policy Advisor
Haley Ortiz, ADH Health Policy Director
Marisha DiCarlo, Ph.D., Director Health Communications
Meg Mirival, Public Information Officer
Andy Davis, Arkansas Democrat-Gazette
James Bledsoe, MD, Chief Physician Specialist
Chris Lawson, Ozark Mtn. Regional Water
Andy Anderson, Ozark Mtn. Regional Water
Charles Lyford, Office of Attorney General
Weldon Johnson, DDA Foundation
Nancy Cox, Legal

MEETING OF THE ARKANSAS STATE BOARD OF HEALTH

The meeting of the Arkansas State Board of Health was held Thursday, July 28, 2016, in the Charles Hughes Board Room of the Freeway Medical Building in Little Rock, Arkansas. President Lambert asked those members participating by conference call to give their names. Miranda Childs-Bebee, D.D.S., Susan Jones, M.D., Beverly Foster, D.C. and Robbie Thomas-Knight responded. There was a quorum and the meeting was called to order at 10:00 a.m.

President Lambert announced that Rick Hogan, who provided a great amount of service to the Board and to the state, had retired recently and a resolution had been drafted honoring him.

Dr. Nate Smith read the resolution honoring Rick Hogan:

ARKANSAS STATE BOARD OF HEALTH Resolution Honoring Rick Hogan, J.D., MPH

WHEREAS, Rick D. Hogan, J.D., MPH, has practiced law in the State of Arkansas for over thirty years. Throughout his entire career he has represented the State and its various agencies; first as Assistant Attorney General, then Deputy Attorney General and finally as General Counsel for the Arkansas Department of Health.

WHEREAS, Mr. Hogan earned his Bachelor of Science in Finance and Accounting from Arkansas State University in 1980 and his law degree from the University of Arkansas in Little Rock in 1983. He has been licensed to practice law in Arkansas since 1983. He has also had a longtime interest in public health, earning a Master of Public Health from Tulane in 2004.

WHEREAS, Mr. Hogan grew up in rural, Northeast Arkansas and has spent his career making efforts to further the health and quality of life for people in all areas of the State. In his almost twenty years with the Arkansas Department of Health, Mr. Hogan provided legal counsel in efforts to further childhood immunization requirements, create a state-wide trauma system, and respond to public health emergencies, such as SARS and Hurricane Katrina.

WHEREAS, Mr. Hogan has worked throughout his career to further public health at all levels. He was actively involved with the Network for Public Health Law, a network that provides legal assistance, resources and connections to public health attorneys, advocates and leaders across the nation. He was also involved in the Arkansas Public Health Association, often speaking at the annual conference. Most important to Mr. Hogan, though, was the future of public health law. He sought to advance the profession by mentoring students at the Boozman College of Public Health and by teaching Public Health Law to its students.

THEREFORE, BE IT RESOLVED that, in recognition of over thirty years of service to the citizens of the State of Arkansas and in furtherance of public health, the Arkansas State Board of Health hereby acknowledges and honors Rick D. Hogan, J.D., MPH.

Dr. Smith added that Rick has a heart for public health and for the people of Arkansas. Dr. Clark Fincher made a motion to accept the resolution; the motion was seconded by Gary Bass and the resolution carried.

APPROVAL OF MINUTES

President Lambert entertained a motion for approval of the April 28, 2016, Quarterly Meeting minutes, and the Special Meeting minutes of the Arkansas Cancer Registry held on June 21, 2016. Robbie Thomas-Knight asked if the minutes had been corrected on the motion having to do with abortion facilities and President Lambert stated that in the previous set it showed that the motion was defeated but in reality the motion passed approving the abortion facilities regulation as presented. Ms. Thomas-Knight pointed out on page 2, the second full paragraph, the word “conscious” should be “conscience”. Ms. Thomas-Knight made a motion to accept the minutes as amended. Dr. Zini seconded the motion and the motion passed.

OLD BUSINESS

Final Approval of Rules and Regulations for Massage Therapy in Arkansas

Ms. Kelli Kersey, Cosmetology and Massage Therapy Section Chief, asked the Board for final approval of the Rules and Regulations for Massage Therapy in Arkansas. Dr. Zini made a motion to approve the rules and regulations as outlined in the packet. The motion was seconded by Mr. Fortenberry and the motion carried as presented.

Appeal of Cosmetology Technical Advisory Committee’s Decision

Ms. Elizabeth Harris, J.D., Deputy General Counsel, came before the Board in the matter of Arkansas Department of Health v. Blytheville School of Cosmetology. Ms. Harris stated that the Respondent, Juana Brown was unable to appear today due to vehicle problems and requested a continuance. Ms. Harris advised that she would reschedule this matter for the October meeting. President Lambert stated that this item would be continued to the next meeting.

NEW BUSINESS

Approval of Proposed Amendments to Rules and Regulations Pertaining to the List of Controlled Substances

Mr. James Myatt, PD, Branch Chief Pharmacy Services, came before the Board with an updated list of Controlled Substances for approval. Mr. Gary Bass made a motion to approve the list. Ms. Peggy Walker seconded the motion and the motion carried.

**Proposed Findings of Fact, Conclusions of Law
and Order for Ozark Mountain Regional Public Water Authority**

Mr. Reginald Rogers, Deputy General Counsel, stated that this system involves Act 197 of 2011 requiring fluoridation of public water systems consisting of five thousand people or more. A hearings subcommittee met on March 29, 2016, with Mr. Alan Fortenberry as chair. Mary Beth Ringgold and P.J. Walker were part of the hearings subcommittee. Counsel was present for Ozark Mountain Regional, Mr. Chris Lawson with the Friday Firm and is present here today. Also, Mr. Andy Anderson representing Ozark Mountain. Today we also have an Assistant Attorney General from the State Attorney General's Office, Mr. Charles Lyford. Ozark Mountain raised constitutional issues challenging the constitutionality of Act 197 of 2011. When that was done, I reached out to Attorney General Leslie Rutledge's Office, and they assigned this to Mr. Charles Lyford because it dealt with constitutionality in defense of a statute issued by the state legislature.

In the hearing on March 29th arguments were heard, evidence was presented and the subcommittee's recommendation was that the water system was out of compliance with Act 197 of 2011. The system has not made progress towards completion of the fluoridation project or made movement towards complying and therefore the subcommittee issued the recommendation found in the proposed findings.

Mr. Rogers stated that he was not sure if the members of the Board wanted to hear argument from Mr. Lawson. But you have copies of Mr. Lawson's objection to the Order and Notice of Hearing, and we will make this part of the record in case there is an appeal.

Mr. Harper asked what Mr. Lawson's objection was. Mr. Rogers responded that Mr. Lawson believes that Ozark Mountain is comprised of around 18 systems and that they don't meet the requirement of the statute because each individual system perhaps is less than 5000.

Mr. Harper asked if Mr. Lawson was given an opportunity to do that at the subcommittee hearing. Mr. Rogers stated that Mr. Lawson raised that issue.

Mr. Rogers also stated that he has the transcript of the hearing for review as required by statute. Mr. Lawson was provided a copy of the transcript some time ago. Mr. Rogers also added to the record, for the Department's benefit, an Attorney General's Opinion No. 2013-145 which we believe supports our position in some respects. I'm adding this to the record in case there is an appeal by any of the parties.

Mr. Rogers is asking for the Board's final decision in the Findings of Fact, Conclusions of Law and Order on the recommendations of the hearings subcommittee to find that Ozark Mountain Regional Public Water Authority is out of compliance with Act 197 of 2011. There has been no progress towards completion of the fluoridation project. The subcommittee also finds that Act 197 does apply to the Respondent. The subcommittee finds that Respondent should be treated the same as any other regional water district. If any of the milestones are not met, the Respondent will be assessed a fine of \$500.00 a week as the fine amount in accordance with the law for non-compliance with the Act.

Dr. Fincher made a motion to approve the findings of the subcommittee. Mr. Harper seconded the motion and the motion carried.

**Approval of Appointment to State Committee of
Plumbing Examiners**

Mr. Bob Higginbottom, Director, Protective Health Codes, came before the Board asking for approval to appoint a Master Plumber representative to the State Committee of Plumbing Examiners due to a vacancy created in July of 2009. The Department recommended Mr. Clay Brown from Prescott, Arkansas, who works in a family owned plumbing business and has an excellent reputation.

Mr. Fortenberry made a motion to appoint Mr. Brown. Dr. Hui seconded the motion and the motion carried.

**Approval of Reappointment to Lay Midwife
Advisory Board**

Ms. Debby Taylor, R.N., Women's Health Section Chief, came before the Board asking for approval to reappoint Tanya Smith to the Midwifery Advisory Board. Ms. Walker made a motion to accept the recommendation. Dr. Weinstein seconded the motion and the motion carried.

**Approval of Appointment of Independence County
And Scott County Health Officers**

Dr. Gary Wheeler, Chief Medical Officer Infectious Disease, came before the Board asking for approval of the appointments of Dr. Seth Barnes as the Independence County Health Officer and Dr. Sara Robertson as the Scott County Health Officer. Dr. Barnes was nominated by the Independence County Judge and the Administrator of the County Health Unit. Dr. Robertson was also nominated by the County Judge and County Health Unit Administrator. Dr. Zini made a motion to appoint Drs. Barnes and Robertson. Dr. Fincher seconded the motion and the motion carried.

**Approval of Active Consent for Release of Data
From the Arkansas Central Cancer Registry**

Mr. Ron Brown, Epidemiologist, Arkansas Central Cancer Registry, came before the Board requesting approval to release data for four active consents that was received from NAACCR and one from an Arkansas Researcher that wanted data on breast cancer recurrence rates. These were reviewed by the subcommittee on June 21, 2016. Dr. Hui made a motion to approve. Mr. Fortenberry seconded the motion and the motion carried.

Other Business

Update on Public Health Accreditation

Ms. Stephanie Williams, RNP, MPH, Deputy Director for Public Health Programs, reported that Dr. Smith was notified by the Public Health Accreditation Board that the Arkansas Department of Health is accredited and has received an official plaque. Ms. Williams stated that this was a process that was started in 2012 and involved a lot of work by many people in the Department and tremendous support from other special people. In five years we will restart the process.

Dr. Smith added that this was a big accomplishment and it is a process that took more than five years. Ms. Williams went on to outline for the Board what the process will be for reaccreditation in five years.

President Lambert commended and congratulated Ms. Williams and the staff for going through the process.

President's Report

President Lambert had nothing to report.

Director's Report

Dr. Smith stated that he had three things that he wanted to update the Board on, along with assistance from the staff. First, he gave the Board an update on how the Department is going to use the \$2,000,000 of trauma carry-forward funds to further the goals of reducing teen pregnancy in our state. Dr. Smith asked Ms. Williams to give a brief update. Ms. Williams stated that one thing that stood out in looking at the teen pregnancy component was that the 18 and 19 year olds drive our teen pregnancy rate here in Arkansas. Our family planning program has struggled with a tremendous interest in long acting reversible contraceptives. Part of our issue has been that these are expensive methods and they are difficult for us to stock. We are excited that we are now going to have funds available to establish that inventory.

Dr. Fincher commented that if he remembered correctly, the legislature passed a law that the state would provide long acting reversible contraception free of cost to any person who could not afford it, and the results of that were that it cut the teenage pregnancy rate in half, reduced abortions and saved money for the state. I think we, as a Department, should do whatever we can. Is there any hope for a legislative solution in Arkansas to this? I think it would be more comprehensive and effective if it could be done.

Dr. Smith stated that our local health units will provide family planning services for anyone regardless of the ability to pay. The LARCs are reimbursable for those covered by insurance, so the barriers to doing that were not statutory. The barriers were, one, training of our staff but now we have trained staff covering the state; and the second is priming the pump. You can't get reimbursed for something that is not in your inventory and this two million is going to take us a

long way toward that. I don't see any barriers at this point to us being able to offer LARCs to anyone throughout the state, at least in our local health units.

The second update has to do with legal action on birth certificates, specifically the issue of how to deal with non-biological parents and same sex marriages. Dr. Smith asked Mr. Brech to give an update on this issue.

Mr. Brech stated that when the Supreme Court approved the same sex marriage laws birth certificates were mentioned in one part. It talked about whether or not same sex couples should have assumed rights and that was one of the rights they put in. All the cases across the county that have been brought were that a married couple should be on the birth certificate automatically. Those dealt with female couples where one is the biological mother and there was artificial insemination, so there is no father. One issue is, regardless of who is on the birth certificate there is a biological father who has the right and he needs to get on the birth certificate in order to distinguish that right. All of the cases that have occurred have dealt with an anonymous sperm donor and a female same sex couple. The lawyers in Arkansas who brought the lawsuit against us, if they were married, they wanted to be on the birth certificate. There is an artificial insemination statute in Arkansas that was passed in the mid-eighties that deals with, if the husband is aware that there is an anonymous sperm donor and they sign a certificate, it has to be done by a medical doctor, then they are automatically put on the birth certificate as the father. The attorney wasn't happy with that solution. She is pushing for across the board if you have a married couple, then they have to be on the birth certificate.

Mr. Brech stated that the briefs have been submitted to the court in the litigation, and we are continuing to operate under our existing rules and regulations.

President Lambert asked that the Board be kept informed as to the status of the appeal, where we're going and where it ends up.

Dr. Smith's final update was on the medical cannabis ballot initiative. He stated that at our educational session in October Dr. Bates is setting aside a significant period of time to discuss the medical cannabis ballot initiative. By that time we should know what acts or amendments will be on the ballot, and we will go over some of the details of those so that you can understand how those could potentially impact the Health Department. Dr. Bates asked me to throw that out as a teaser, so if you were trying to make the decision whether to come to the educational session or not, that is not the only issue we will be discussing, but Dr. Bates really wants you to be there. I would also like to have as much participation in that discussion as possible.

Dr. Bledsoe stated that this has been a very interesting topic. He has had many requests for media interviews and friends and colleagues have asked "What's going on with this issue?" He strongly encouraged the Board members to attend the October meeting because it is incredibly complex. When you talk to people about medical marijuana you have to really define your terms because it means different things to different people. I think it would be very important for you to come to the October meeting if you are interested in this important public health issue.

Public Comments

There were no public comments to be made.

There was no further business to come before the Board and Dr. Zini made a motion to adjourn the meeting. Dr. Johnson seconded the motion and the meeting was adjourned at approximately 11:20 p.m. on July 28, 2016.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'N. Smith', written over a horizontal line.

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

October 20, 2016