

**QUARTERLY MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH
July 26, 2012**

MEMBERS PRESENT

George Harper, President
Clark Fincher, M.D., President Elect
Paul K. Halverson, DrPH, Secretary
Miranda Childs-Bebee, DDS, (via phone)
Lawrence Braden, M.D. (via phone)
Alan Fortenberry, P.E.
Anthony Hui, M.D.
Susan Jones, M.D.
Tom Jones, R.S.
Lynda Lehing
Marvin Leibovich, M.D.
John R. Page, P.D.
Rev. Dwight Townsend (via phone)
Peggy Walker, RN-BC, MSN, CADC
Patricia Westfall-Elsberry, O.D.
Anika Whitfield, D.P.M.
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
Xavier Heard, Human Resources Director
John Senner, Director, Center for Public Health Practice
Dr. Glen Baker, Director, Public Health Lab
Stephanie Williams, Director, Center for Health Advancement
Katheryn Hargis, Governmental Affairs Policy Director
Michelle Smith, PhD, Director Minority Health
Randy Lee, Director CLPH
Shirley Louie, Epidemiology
Lori Simmons, Epidemiology
Bryan Whitaker, D.D.S, Director Oral Health
Carol Amerine, ADH Oral Health
Renee Mallory, Branch Chief, Health System
Terry Paul, Env. Health Branch Chief
Bernie Bevill, Section Chief, Radiation Control
Angela Minden, Radiation Control
Connie Melton, Section Chief, Health Fac. Ser.
Laura Bailey, Branch Chief, Alcohol Testing
Joyce Dees, Governor's Office
Bill Turpley, AR State Dental Assn.
Craig Wilson, ACHI
Suzanne McCarthy, ACHI
Kevin Ryan, ACHI
Rick D. Hogan, General Counsel
Robert Brech, Deputy General Counsel
Reginald Rogers, Deputy General Counsel
Nancy Cox, Legal Services

MEMBERS ABSENT (excused)

Joe Thompson, M.D.
Mary Beth Ringgold
Alexander Registre, Sr., D.C.
Larry Fritchman, D.V.M.
Glen "Eddie" Bryant, M.D.
Jim Lambert

QUARTERLY MEETING OF THE STATE BOARD OF HEALTH

The July Quarterly Meeting of the Arkansas State Board of Health was held Thursday, July 26, 2012 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. Childs-Beebe, Rev. Dwight Townsend and Dr. Larry Braden responded and Dr. Halverson reported there was a quorum. Subsequently, Dr. James Zini joined in on the call. President Harper called the meeting to order at approximately 10:05 a.m.

APPROVAL OF MINUTES

President Harper entertained a motion for approval of the minutes of the April 26, 2012, quarterly meeting. Dr. Hui made a motion to approve the minutes. Dr. Fincher seconded the motion and the minutes were approved as presented.

OLD BUSINESS

Final Adoption of Rules and Regulations Pertaining to Fluoride Varnish

Mr. Robert Brech, Deputy General Counsel, advised that this rule was a result of one of the acts from the last session which required the Board to pass rules for fluoride varnish. These have been through the complete process and today we are asking the Board for final adoption. Dr. Hui asked concerning the definition of number 5., "other licensed health care professional," national certified nursing aide, would that come under the definition? Mr. Brech stated the way he read the rule it would have to be a licensed health care provider in the State of Arkansas. The idea was it would be anybody licensed in that office whether they were a nurse or anybody with a professional license in Arkansas. Dr. Leibovich made a motion to adopt the rules and regulations. Mr. Fortenberry seconded the motion and the motion carried.

President Harper asked Mr. Rick Hogan to bring the Board up-to-date on the role of dental hygienists and dental sealants. Mr. Hogan first asked Ms. Stephanie Williams to introduce Dr. Lynn Mouden's replacement. Ms. Williams introduced Dr. Bryan Whitaker as the Department's new Director of the Office of Oral Health. She informed the Board that Dr. Whitaker is an Arkansas native, and has been practicing in the Springdale area for the past 14 years. He has a Doctoral degree in dental surgery, as well as certificates in oral and maxillofacial pathology from Emory University and endodontics from the Medical College of Georgia. The Board members welcomed Dr. Whitaker to the Department.

Mr. Hogan then explained that the Dental Board rules were moving forward with regard to the issue of dental hygienists; there are no collaborative agreements but they are working toward creating rules in this area, as they are required to do under the laws. Mr. Hogan suggested that President Harper appoint a subcommittee to assist the Department and work with Dr. Whitaker and his staff to complete the process.

President Harper appointed a subcommittee consisting of Dr. Clark Fincher as chair, Dr. Child-Bebee, Dr. Joe Thompson, Dr. Susan Jones, Dr. Westfall-Elsberry, and Dr. Anika Whitfield. He charged the committee with the responsibility of looking into some of the issues concerning the dental hygienists and bringing a report back so we can move forward with the rules.

**Final Adoption of Rules and Regulations for Control of
Sources of Ionizing Radiation**

Mr. Bernie Bevill, Radiation Control Section Chief, asked for final approval of the adoption of the new revisions to the rules and regulations. The administrative rules process has been completed and these regulations will allow us to continue to be compatible with the U.S. Nuclear Regulatory Commission. The State of Arkansas has been an agreement state since 1963. Part of the compatibility agreement is that we have regulations that are compatible with the U.S. Nuclear Regulatory Commission.

Dr. Susan Jones made a motion to adopt the rules and regulations. Dr. Hui seconded the motion and the motion carried.

NEW BUSINESS

**Proposed Revisions to the Rules and Regulations Pertaining
to Blood Alcohol Testing**

Ms. Laura Bailey, Branch Chief, Alcohol Testing, presented the proposed revisions to the Arkansas Regulations for Alcohol Testing and reported that the Department was mandated to change the regulations to include that auxiliary officers train to run drug tests for DWI suspected stops. Ms. Bailey stated with the approval of the new instrumentations and the methods of analyses a few years back, those changes were included as well and the old instrumentation was taken out that was no longer approved for use. Some of the changes were brought in line with practices today and some language was cleaned up. Today we are asking to move forward.

Ms. Walker made a motion to begin the administrative process. Dr. Page seconded the motion and the motion carried.

**Proposed Revisions to the Rules and Regulations
for Medical Waste**

Mr. Brech stated that this rule deals with medical waste and has not been updated since 2000 and since that time there have been new technologies and these rules will address those. We are asking to start the administrative procedure process to update these rules. Dr. Whitfield made a motion to begin the administrative process. Dr. Leibovich seconded the motion and the motion carried.

Proposed Revisions to List of Controlled Substances

Mr. Brech stated in the last session there was an Act passed that granted Dr. Halverson the authority to list controlled substances by his signature alone for up to 180 days. These synthetic drugs are coming about routinely now and need to be addressed. We have had three emergency rules in process now. In May, by an emergency rule, we dealt with Phenazepam, which is a Valium type drug, it was developed in Russia, it is not approved in the United States, and it was on the over the counter market and needed to be addressed. A month after that there was a substance that came to our attention from the Crime Lab, and that was MeO, which is an analog of the bath salts, a hallucinogenic substance. Last Friday another synthetic cannabinoid came to our attention, XRL11, and we did that by emergency rule as well. Today we are asking to update the permanent list, incorporate all three emergency rules in the controlled substances list, and we hope to get through that process within the 180 day period before the emergency rule expires.

Dr. Zini asked what process of information was given to the director before he made such a declaration. Mr. Brech stated that the statute lays out certain criteria that the director takes into account; it's the same criteria that would go into scheduling any drug. Typically, we are notified by the Crime Lab or by the Poison Control Center that there is a new substance out there that people are taking. It goes through the Pharmacy Division and through our laboratory, and we discuss whether or not we should take action on it. With these three substances, we all agreed that it did warrant taking emergency action, and with this emergency authority that Dr. Halverson has, we can stop that as quickly as it comes to our attention. We think we are on the forefront of keeping substances off the street and will continue that authority.

Dr. Halverson noted for the Board, and stated it was disconcerting to him, that individual states are having to take action on these things. In my view, this is a job that the DEA and FDA and those people who deal with drugs on a day-to-day basis for the country should be dealing with. There are a number of impediments to moving as quickly as we can move, and it is on our radar list to work with HHS and in particular to try to streamline the process at a national level.

Dr. Leibovich stated he was very happy that Dr. Halverson now has legislative authority so that we don't have to have an emergency meeting every other week. That being said, I would like to move that we approve this list. Ms. Walker seconded the motion and the motion carried.

Approval of Consent Decree: Box Hound Marina

Mr. Brech informed the Board that this entity continues to allow smoking in its establishment. A Health Department inspector went to Box Hound Marina after another complaint was lodged and the respondent admitted that he was not in compliance. Respondent, Ed Sac, consented to, and has paid, a \$700.00 civil penalty for violating the Arkansas Clean Indoor Air Act. Dr. Whitfield made a motion to approve the consent decree. Mr. Fortenberry seconded the motion and the motion carried.

Approval of Consent Decree: Dr. Allison Shaw Devine

Mr. Hogan reported that Mr. Bevill and his staff have been working with Dr. Shaw-Devine on this matter for quite some time. This is a source of radiation that was going unprotected and the practice had been closed for several months. Finally a solution was reached to get this transported and protected so it would no longer be a problem to the public. I'm asking the Board today to move to accept the Consent Decree. Mr. Fortenberry moved that the Consent Decree be approved. Dr. Susan Jones seconded the motion and the motion carried.

OTHER BUSINESS

Mr. Donnie Smith, Director for Center for Health Protection, provided a report on the progress the Department is making relative to implementing the Prescription Drug Monitoring program. In 2009 in the United States there were 37,000 deaths that were attributed to the abuse of prescription drugs. Surveys have been done by the behavioral health schools and there is some interesting data that came out of those. In a survey done last year in Arkansas 1 in 5 individuals entering their senior year of high school reported they had abused prescription drugs. Seven point eight percent of Arkansas high school seniors reported the use of illicit prescription drugs in the past 30 days. We certainly know that we have a problem in our state.

The strategy for addressing this problem is multifaceted and I want to mention some of the different approaches, and then I will give an update on the Prescription Drug registry. The Drug Take Back and Disposal Program is coordinated by the office of the State drug czar in coordination with local police departments. The Provider Education/Policy, and Dr. Leibovich, shared some materials with us that the State of Washington has developed, which we want to move forward in working with groups in Arkansas that will help establish some parameters and recommendations for controlled substances, particularly in the emergency room setting. Public education is critical. Seventy percent of the prescription drugs that are abused are received by an individual from either family or from friends. The Prescription Drug Registry is a tool which also can help address this problem.

Act 304 of 2011 authorized the agency to establish a registry if funding was secure and set a date of March of 2013 for that registry to be operational. Forty-eight states have such authorization of established registries; 40 states actually have registries that are operational. We are one of eight states that are in the process. The unfortunate part of our timing is that those states that are up and running have the opportunity to access two different federal grants for start-up. One of those was funded by Samsung, and the federal budget agreement last spring was done away with.

We've spent the last few months researching and have developed a request for proposal which has been issued by the Office of State Purchasing and two vendors have responded to that.

Mr. Smith shared with the members that he appreciated Dr. Leibovich's interest and participation in this issue.

Mr. Smith stated that the next step is to move ahead and select a vendor. We are also advertising for a pharmacist position, and we are required in the statute to write rules and regulations. We

are working with the National Association of State Model Drug laws and the National Association of Boards of Pharmacy to assist in that. We anticipate that at the next Board meeting we will be bringing to you rules and regulations to begin the administrative procedures process concerning the registry. Another requirement in the legislation that would come to the Board in the future is that we be required to establish an advisory committee. There are 17 groups that are represented on that committee, 16 of those are actually appointed or approved by the Board of Health and one is to be appointed by the governor.

Dr. Leibovich thanked Dr. Halverson and Donnie Smith for inviting him to participate in the process of looking at some of the proposals. He stated that prescription drug abuse is a terrible problem in Arkansas, especially for emergency department physicians and for dentists. We don't have a good way of keeping up with doctor shopping. The prescription drug monitoring program will be a tremendous help because we can easily determine that someone just got a prescription earlier that day. He stated that he appreciated the efforts the Health Department is making to bring this to fruition.

Dr. Halverson stated that one of the dilemmas we face is the fact that the law indicated that this program is subject to funding availability and the reality is that we had two grants that we were hoping to use and only one is going to be available. We will have enough money to get the program started but we are not going to have a continuing source of funding unless we are able to work with the providers and others, and the legislature ultimately, to get approval for a permanent source of funding. This is urgently needed, but we are also doing so with a little bit of faith that we will be able to work with the providers and others to be able to work through some way of permanently financing it.

Dr. Whitfield asked if there was a standard in the emergency room of asking patients what pharmacies they have used. Dr. Leibovich responded that if you ask questions like that most people are not going to tell you that, they will just tell you they don't have a pharmacist.

Dr. Fincher asked Mr. Smith if he could clarify what he wanted from the Board. Mr. Smith responded by stating that the application that will go to the National Governors' Association from the State of Arkansas to the Governor's office, does have, as one of the components, letters of support for the application. If the Board authorized the President of the Board to write a letter supporting this application, I think it would strengthen our application to the NGA.

Dr. Fincher made a motion that the Board write a letter in support of that grant application. Dr. Susan Jones seconded the motion and the motion carried.

President Harper added that this is a terrible problem, but he doesn't want to do anything that would operate as a deterrent for physicians to give medication to people that were legitimately in pain, so that there is so much red tape that they would be reluctant to prescribe pain medicine if it is really needed.

PRESIDENT'S REPORT

President Harper advised the Board that he had three items that he would like to talk about. First, he asked Dr. Jones to recognize Dr. Robert Miller, a leader on the Board of Health who passed away since our Board last meeting, by reading a Resolution. Dr. Jones told the Board that she had worked with Dr. Miller during medical school and testified to the fact that he never turned anyone away regardless of their ability to pay. She stated she was pleased that she is somewhat following in his footsteps in her work. Dr. Jones said she felt honored to recognize him by reading the Resolution. (Dr. Jones proceeded to read the Resolution). President Harper informed the Board that without objection he would sign the Resolution and see that Dr. Miller's family received a copy.

President Harper stated that he had mentioned in April that, during the merger and demerger of the Department of Health, there were a couple items that were problems, and one was that in the legislation that came out of that, the Board lost any role in the selection of a director for the Department. Additionally, under the existing law, there are no qualifications enumerated for a director of the department. With the help of Representative Dees, we met with the Governor's office, and they have indicated their support for legislation that would make changes so the Board would have a role in the selection of a director and that there would be qualifications for the director.

The next item, in our bylaws and in our statutory charge, one of the major roles for this Board is one of advocacy for public health policy. Particularly for those policies that would help those most in need. I believe we now have a timely opportunity to take and express a position on a very important policy issue. In that regard, I would like to yield to President-Elect Dr. Fincher to address this matter. I would hope that we could have a consensus, perhaps a unanimous vote in support of this effort.

Dr. Fincher read a personal statement and then introduced the Resolution to the Board for their consideration. "The recent Supreme Court of the United States' decision that the individual mandate to purchase health insurance contained in the Patient Protection and Affordable Care Act is constitutional," has made headlines and has been the focus of discussion and division in our country for the past weeks. The court also decided that the ACA's mandatory expansion of Medicaid in all states was not to be allowed and that states could opt out without losing their Medicaid programs as a result. One of the major challenges for the Department of Health and our Board, our mission of improving the health of the citizens of our state, is the fact that almost 600,000 Arkansans, out of a population of 2.9 million, have no insurance coverage and cannot afford to pay for it themselves. Providing basic services to these people consumes a great deal of our resources and involves hidden taxes and forced charity on institutions such as hospitals and providers of care who, must by law, provide very expensive care for them when they present to hospitals and emergency rooms with urgent needs. This does not lead to good quality of care but certainly raises costs for every Arkansan in a very inefficient manner.

There are many reasons that we should support the Medicaid expansion in our state. Just providing health care for 250,000 poor Arkansans, thus promoting the mission of the Department of Health of better health for all of our citizens is primary.

July 26, 2012

Page 7

The large influx of funds to our state will boost employment, stimulate our economy, be good for health care providers and hospitals and actually increase state and local revenues. Emergency rooms will be less crowded as patients seek care prior to emergent health needs at their primary care physicians, thus allowing more timely and cost effective care to those with true emergent needs. Hidden costs that we all pay through increased premiums and taxes to support the cost of this care currently provided to this population should decrease, thus financially benefiting us all.

The most compelling argument in my mind for expansion is this: If we do not accept the program, Arkansans will still bear the financial burden through federal taxation to pay for the program for states that do participate. Thus, we would pay the bill without getting any of the benefit.

The study published in the New England Journal of Medicine indicates that residents of states that expand coverage will probably live longer, be healthier and have better access to medical care. Researchers at the Harvard School of Public Health, who compared states that voluntarily expanded their Medicaid programs over the last decade with neighboring states that did not, found mortality rates that were more than 6% lower than states with more generous coverage.

Dr. Fincher proposed that we encourage our lawmakers to put politics aside and vote to accept the Medicaid expansion. (Dr. Fincher read the Resolution on the Patient Protection and Affordable Care Act).

President Harper asked for a motion to adopt the Resolution to get the discussion started. Dr. Whitfield moved that the Board adopt the Resolution. Dr. Jones seconded the motion and Dr. Leibovich began the discussion. He stated that it was his thought that a large part of the medical society will support the Resolution. I'm not sure this will keep people out of the emergency room and will get more medical care from their primary care physician because we don't have enough primary care physicians right now and a lot of people come to the emergency department because they can't get in to see their primary care doctor. I don't want to spoil our Resolution, but my concern is after the first three years of this program the government is going to pay 100%, but then we are going to have another \$250,000 on the Medicaid roll that somebody is going to have to pay for.

After additional discussion among the members, Dr. Jones stated she couldn't see how we cannot accept this resolution. Dr. Whitfield said she was extremely excited about this, and is looking forward to it.

Dr. Fincher moved that we accept the Resolution. Dr. Whitfield seconded the motion and the motion carried with Dr. Leibovich voting against and Mr. Fortenberry abstaining.

DIRECTOR'S REPORT

Dr. Halverson announced that Dr. Gary Wheeler was recently appointed Branch Chief of Infectious Disease, and that Robert Brech has been appointed Chief Financial Officer.

July 26, 2012

Page 8

Dr. Halverson stated he was proud of the fact that in one of Governor Beebe's weekly reports he chose to highlight the success of our trauma call center. Our trauma call center has been extremely successful.

Arkansas has led the country in stroke mortality. Over 49% of all adults in Arkansas have hypertension, and of those adults that have hypertension, less than 30% of them have their hypertension under control. We are working with ACHI, UAMS and others, along with the Department of Health and Human Services, to explore the potential for a pilot program to treat hypertension in an expanded way. It would be a physician directed protocol utilizing nurse practitioners and pharmacists to initiate treatment and to work with community health workers to expand the reach of the Health Department in the medical care system. This is important because it has gotten the attention of the Department of Health and Human Services and they are very interested in partnering with us.

Arkansas has now joined forty-six other states in pledging to support a reduction in infant mortality, particularly through a program called "Babies are Worth the Wait." The emphasis is on reduction of late pre-term births or those non-medically indicated births prior to 39 weeks gestation. We have seen states that have reported as much as a 40% reduction in birth trauma, reductions to NICU and reductions in costs, and improvement in care as a result of reducing early pre-term deliveries.

There was recently a report generated by Senator Harkin that estimates the loss of federal funding to each state if, in fact, we go through federal sequestration of the funding for federal budgets. If they are unable to reach an agreement around a federal budget, the sequestration effect for health in particular, including all of the federal programs, would be incredible. I don't know what we would do if we actually got that full sequestration. It amounts to a huge percentage of our budget and many of the jobs at the Health Department are supported by federal grant. This would impact us severely.

Today we will have a press conference highlighting the advances that have been made since the passage of graduated driver's license. We will be reporting, based upon research done by ACHI, substantial reductions in morbidity and mortality of children that have not died in motor vehicle accidents. It is stunning in terms of the impact of that law on reduction in deaths due to motor vehicle accidents.

Dr. Halverson asked Dr. Nate Smith to briefly talk about influenza and pertussis since those are pressing issues that we are looking to. Dr. Smith stated with regard to influenza, it is never possible to predict exactly what is going to happen in terms of when the season will start, how severe it will be or what the vaccine supply is going to be like. We are expecting all vaccine orders to be filled. The vaccine components will be slightly different from the previous season.

As you may be aware, there has been a large increase nationally in the number of pertussis cases in 2012 compared to 2011. Overall we have seen more than twice the number of reported cases the first half of this year compared with the same period of time last year. The number of cases in Arkansas has remained low. We have only had 34 reported cases in the first six months of this

July 26, 2012

Page 9

year, comparable to the 41 we had for the same period last year. As of now, we are not having pertussis issues in the state.

President Harper encouraged all Board members to try to attend the next Board meeting, particularly the educational session.

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

The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

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