

**QUARTERLY MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH
November 3, 2011
Winthrop Rockefeller Institute**

MEMBERS PRESENT

Susan Jones, M.D., President
Paul K. Halverson, DrPH
Miranda Childs-Bebee, DDS
Lawrence Braden, M.D.
Dr. Glen "Eddie" Bryant
Alan Fortenberry, P.E.
Dr. Larry Fritchman
Clark Fincher, M.D.
George Harper, President Elect
Tom Jones
Lynda M. Lehing
Marvin Leibovich, M.D.
John R. Page, P.D.
Mary Beth Ringgold
Dr. Joe Thompson
Peggy Walker, RN, MSN
Anika Whitfield, D.P.M.
Terry Yamauchi, M.D.
James Zini, DO

GUESTS PRESENT

Dr. Joe Bates, Deputy State Public Health Officer
Ann Purvis, Deputy Director for Administration
Donnie Smith, Center for Health Protection
Xavier Heard, Human Resources Director
Dr. James Phillips, Branch Chief, Infectious
Disease
Dr. Nate Smith, Deputy Director for Public
Health Programs
Ann Purvis, Deputy Director for Administration
Ann Russell, Director, Health Communications
Katheryn Hargis, Governmental Affairs
Policy Director
Michelle Smith, PhD, Director Minority Health
Jerry Pack, Chief Information Officer
David Grimes, ADH
John Senner, Director, Center for Public
Health Practice
Dr. Glen Baker, Director, Public Health Lab
Mike Wilson, EOC Technical Manager
David Gunerman, AUL
Dr. Tom Kimbrell, ADE Commissioner
Dr. Dan Rahn, Chancellor UAMS
Barbara Kumpe, CHAC
Connie Johnson, Director's Office
Rick D. Hogan, General Counsel
Robert Brech, Deputy General Counsel
Chris McNeal, Legal Services
Nancy Cox, Legal Services

MEMBERS ABSENT (excused)

Anthony Hui, M.D.
Jim Lambert
Alexander Rejistre, Sr., DC
Rev. Dwight Townsend
Patricia Westfall-Elsberry, O.D.

QUARTERLY MEETING OF THE STATE BOARD OF HEALTH

The November Meeting of the Arkansas State Board of Health was held Thursday, November 3, 2011 in the Governor's Conference Room of the Winthrop Rockefeller Institute, Petit Jean Mountain. President Susan Ward-Jones called the meeting to order at approximately 10:05 a.m.

President Jones asked for a motion to amend the Agenda to add two items to New Business relating to the Arkansas Cancer Registry. A motion was made and seconded to amend the Agenda. All members were in agreement and responded by stating "aye."

APPROVAL OF MINUTES

President Jones entertained a motion for approval of the minutes of the Special Called Meeting of July 7, 2011, the Quarterly Meeting of July 28, 2011, and the Special Called Meeting of September 29, 2011. A motion was made to approve the July 7 special called meeting minutes. The motion was seconded and the minutes were approved as presented. A motion was made to approve the July 28 quarterly minutes. The motion was seconded and the minutes were approved as presented. A motion was made to approve the September 29 special called meeting minutes. The motion was seconded and the minutes were approved as presented.

OLD BUSINESS

Final Approval of Revised Rules and Regulations Pertaining to the Arkansas Cancer Registry

Mr. Robert Brech, Deputy General Counsel, stated the draft rules were initially approved last fall and the draft was amended based on comments from the Rules Committee of the Legislative Council. The committee was concerned about the penalty provision that was inserted in the rules. A change was made and it is still \$1,000 per violation per day, which is consistent with the statute. However, with the change the Board cannot fine any entity over \$10,000 for any one instance. We are asking today for final approval of this draft. It has not been heard by the Rules Committee after being amended. It will be heard on November 14, 2011 and is not considered to be controversial. Pending conditional approval, if there is a favorable review by the Rules Committee, it will be signed and filed.

Dr. Leibovich made a motion to approve the draft rules, Dr. Braden seconded and the motion carried.

Final Approval of Rules and Regulations for Abortion Facilities in Arkansas

Mr. Brech stated that a draft of these rules was approved and is now before the Board asking for final approval of that draft. The draft has been consented to by all groups involved. He brought the Board's attention to page 4-1, item b. The current rule requires an abortion facility to be within 30 minutes of a hospital which provides gynecological or surgical services. When the distinction was made between the general abortion facilities and the medical abortion facilities, only the general abortion facilities would have to be within 30 minutes of a hospital. The

rationale for that is with the medical abortions; they come in, they take a pill, they leave that facility and go home or wherever. If there are complications, they are likely to occur 24-36 hours after that event. It doesn't make sense to have the medical abortion facility to be within 30 minutes of a hospital because the patient is likely not going to be in that clinic if a complication were to occur. It is important that the Board know about this and address it. It could come up in the Rules Committee on the 14th. This is another item that we are asking for conditional approval with a favorable review from the Rules Committee on the 14th. It will then be signed and filed, and become effective 30 days later. This is one part of the rule that should be addressed by the Board in the event it comes up in the Rules Committee. The Board may want to change this to require all abortion facilities to be within 30 minutes or leave it as drafted where only the general abortion facility would have to be within 30 minutes of a hospital. Mr. Brech stated that it is critical that this be in place by January 1st. Mr. Harper moved to adopt the rule conditionally as it is currently written. Dr. Eddie Bryant seconded and the motion carried.

NEW BUSINESS

Proposed Amendments to the Rules and Regulations Pertaining To Health Facility Infection Disclosure Act of 2007

Mr. Brech stated that during the last session there was an act that amended the current act that these rules were passed under. Hospitals now are going to be participating in the Centers for Medicaid and Medicare Services Hospital Inpatient Quality Reporting Program. If a health facility does not participate in that program, they will be penalized on their Medicaid payments. All that is going to be required right now is central line associated bloodstream infections. Beginning August 1st, that information had to be reported to the CDC. Whatever information goes to the CDC under this program, hospitals have to give the Health Department access to that information. It will not include critical access hospitals at this time. We anticipate surgery site infections will also be included in this program beginning January 1st, 2012. Under the old law, we required all hospitals to collect data on certain infections; we are now relieving the hospitals of having to do that, and we are piggy-backing onto this CDC program to get that information.

After discussion among the board members and Dr. Nate Smith, Dr. Halverson stated that he supported the rules, they create a set-wise direction to move in. The reasons Dr. Smith has mentioned creates alignment for us and they satisfy the alignment issues related to the passage for a law last year, but Dr. Thompson brings up another issue which has to do with promoting policies to increase transparency and accountability. We, as the Board, have a substantial responsibility to begin this process of increasing both transparency and accountability in all of our health care providers. This is important to pass today and move on with this rule in terms of creating alignment. I don't want us to be satisfied with saying, "We've done this and we don't need anything more as it relates to transparency and accountability," because we have substantial work to do, but not in this particular rule. It is important that this rule be passed as proposed because of the nature of the alignments and the agreements that were reached relative to the alignment of the federal program.

Mr. Harper asked what the Health Department is currently doing and asked what we feel our responsibility is with respect to infection control in hospitals. What does the Health Department

have available to it to address problems with the various hospitals in Arkansas that appear to have infection control problems. Mr. Brech stated that the Hospital Association knows that this fight is not over. The trend nationally is for greater transparency. The Hospital Association understands that this is going to go further and eventually transparency will likely occur. One of the things that had to be put in this law is this information cannot be used for any type of licensure or disciplinary action. It is supposed to be a cooperative effort between the Health Department and those institutions to try to clear up any infections.

Mr. Harper stated that he understood that reporting is an important part, but presumes in our hospital regulations we have infection control rules that allow us to look at infection control procedures and activities within the hospital. Mr. Brech stated that information we get from this program cannot be used from a regulatory standpoint, but it is information we can get and we can try to help those institutions do better with their infection rates.

Dr. Zini asked what categories aren't provided under Part 2. Mr. Brech responded that the Board of Health has the authority, by rule, to require additional infections to be collected; they wouldn't necessarily be collected and transferred to the Health Department but the Board could require additional infections to be collected by every hospital.

Dr. Fincher said he was not prepared to vote or make a decision today on public disclosure of this information. He stated that if the Board passes this as presented, it would not, in his opinion, preclude us from looking at public disclosure in the future. In my opinion, that is the way we should proceed, and I would move that we adopt the measure as presented. Dr. Zini seconded the motion and the motion carried with one dissenting vote.

Appointment of New Member to Cosmetology Technical Advisory Committee

Mr. Donnie Smith stated that at the quarterly meeting in July the Board appointed seven members to the Cosmetology Technical Advisory Committee. Since that meeting, one member appointed in July has resigned. We are required in the statute to look at congressional districts and the type of licensure, so the person we are recommending today is Andrea Fuentes. She is a licensed aesthetician and that is a required role on the Board that has to be filled by statute. With the resignation of Ms. Lamastus, we ask the Board to appoint Ms. Fuentes as her replacement on the Board to fill the two year term.

Dr. Fritchman moved to appoint Ms. Fuentes to the Cosmetology Technical Advisory Committee; Dr. Zini seconded, and the motion carried.

Local Grant Trust Fund Subcommittee

Mr. Randy Lee, Director, Center for Local Public Health, asked the Board to approve the Local Grant Trust Fund Subcommittee's recommendations; one is a \$494,000 major grant for a new building in Chicot County, Lake Village, Arkansas; and Nevada County, Prescott, Arkansas, has a \$1,369 mini grant, and they will be making their front area more HIPAA compliant. Mr.

Fortenberry made the motion to approve the subcommittee's recommendations. Dr. Zini seconded the motion, and the motion carried.

Extension of Data Collection for Arkansas Breast Cancer Survivors Study

Mr. John Senner, Director, Center for Public Health Practice, stated that in the law for the cancer registry there is a stipulation that the Board of Health must approve research studies which release individual identifying information. We have received two proposals to the cancer registry. They have a set of people who have given permission to search for their information in cancer registries and take that data back to match up to data that these researchers have. The first one is from the Seventh Day Adventist Church and they had over 100,000 people who completed extensive questionnaires on diet and given specific permission to have their name and identifying information matched to cancer registries. They are currently doing this in 25 states and its specific point is to take advantage of the dietary quirks of Seventh Day Adventists and look at the relationship of eating soy proteins and dietary calcium, and fatty acids to prostate cancer, breast cancer and colon cancer.

The other study is a smaller study of about 22,000 people from UAMS, and they have participated in what they call Spit for the Cure, and this means that they have a saliva sample from 22,000 people who can do genetic studies on these people. Of these, approximately 2,000 have said that they have had breast cancer. Now they want to match the data to the cancer registry to get specific information on the kind of treatment and outcomes of these people and relate it to genetic information they have gotten from the saliva samples.

President Jones asked if these two sets are being added to the registry. Mr. Senner responded that these two studies are asking for permission to match their data against our data. The Adventist Study is a way to match it up against dietary information and in the UAMS study, to match it up against genetic information.

Mr. Harper moved to allow the release of data. Dr. Page seconded the motion and the motion carried.

Report on Expedited Partner Therapy

Mr. Randy Lee described expedited partner therapy as providing medicines or prescriptions to patients with gonorrhea or Chlamydia to take home to their partners. It is being done in 30 states, but we are not able to do it in Arkansas because of some rules and regulations. Why do we need expedited partner therapy? It is basically because what we are doing right now is not working. The case rates of Chlamydia over the last decade have doubled. They have increased from 7,000 to over 15,000 cases in Arkansas each year. 73% of those patients that are diagnosed with Chlamydia are females.

Gonorrhea is a similar story, although there has not been a tremendous increase and we are steady at about number 5 in the U.S. as far as the gonorrhea case rates. We have somewhere

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between 4,500 and 5,000 cases of gonorrhea. In total, you are looking at 20,000 cases that are reported in Arkansas each year of gonorrhea and Chlamydia.

Dr. Leibovich asked what prevents us currently from treating these diseases. Mr. Lee stated that there is an opinion by the Nursing Board, and there is a regulation by the Medical Board that says that, "A physician exhibits gross negligence if he provides any form of treatment, including prescribed legend drugs, without first establishing a proper physician-patient relationship." We are scheduled to go December 1st to the Medical Board to ask for a narrow exemption that would allow us to do expedited partner therapy for Chlamydia and gonorrhea only. That is what is recommended by CDC. In 2005 there were only 10 states that allowed expedited partner therapy. Since then, 20 states have added to that. Now there are 30 states that allow expedited partner therapy. There are 13 states where it is not clear whether the rules and regulations and the laws allow it, and there are only 7 now that clearly do not allow it, and Arkansas is one of those. Because of the Medical Board regulation and because of a Nursing Board opinion, Arkansas has been deemed as it is not allowable.

Dr. Leibovich stated he could not imagine the Medical Board sanctioning any physician that would say, "Here is the prescription for your partner." Dr. Thompson added that he thought asking for a narrow exemption would probably help the Medical Board allow that without changing its position otherwise.

Mr. Lee stated that the Health Department did this years ago as a matter of practice and when we found out about the Medical Board rule and then the Nursing Board opinion, we stopped the practice. We are meeting with the Medical Board on December 1st and the Nursing Board on January 12th to ask that they allow this practice.

Dr. Leibovich moved that the expedited partner therapy be approved to come in line with other states. Mr. Harper seconded the motion.

Dr. Thompson stated he just wanted to be clear on what we're doing. The Board of Health is authorizing the treatment of partners regardless of the Medical Board's position. Mr. Lee responded by saying it would be helpful for the Board to support us going to the Medical Board to ask for this exemption. Dr. Thompson asked if the Board of Health had the authority to authorize this treatment, regardless of the Medical Board's position. Mr. Harper stated that we could authorize it, but we couldn't keep the Medical Board from moving against the physician.

Mr. Lee stated that we have policies and procedures drafted and ready to go if we are given the clearance on this. Dr. Thompson asked if Mr. Lee meant Health Department clinicians, and he stated, "Yes, for our local health units, for our STD clinics, for us, as far as implementing them."

Dr. Halverson clarified by stating that once the changes are made, then the Health Department clinicians who are licensed either by the Board of Medicine or the Board of Nursing, can then operate in a way in which we have already established procedures at the Health Department. It doesn't require Board approval; it is simply a Health Department procedure which will be put in place to authorize its clinicians to operate in the manner that Randy has described.

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Dr. Fincher added that even if we have the authority and power to force this on the Medical Board, I think it would be better to come with a recommendation in support of the Board of Health. If we do that, I think the Medical Board will support and approve this. I would support Dr. Leibovich's motion to approve the Board of Health providing the support to go to the board of medicine with this recommendation.

Dr. Thompson stated he was not advocating for anything to be forced on any other board. I just want to make sure this board doesn't feel deferential to the Medical Board. This board has a fiduciary and explicit authority that shouldn't be deferential to any other entity.

President Jones asked Dr. Leibovich to restate his motion. Dr. Leibovich responded by saying his recommendation would be for the Board of Health to make a recommendation to the Arkansas State Medical Board that they go ahead and give their approval of the expedited partner therapy.

Mr. Lee stated it was his understanding that if the board of medicine will agree, and we have a good indication that the Nursing Board will agree and the Board of Pharmacy will agree also. The name of the patient needs to go at the bottom and we are not going to have the name of some of these patients. I think we are going to need to get that tweaked.

Dr. Thompson asked Mr. Lee if he means the Health Department clinics when he refers to "we," and Mr. Lee stated he wanted to do this in the Health Department clinics, but when we do this, it would be available.

Dr. Thompson asked if it is the intent for all practitioners to have this and Mr. Lee stated "yes". Dr. Fincher seconded the motion as previously stated, and the motion carried.

President Jones informed the Board that item 2.V. on the Agenda is being moved to the afternoon meeting.

Report of Subcommittee on Mandatory Flu Vaccinations

Ms. Peggy Walker, Chair of the Subcommittee, stated that the subcommittee was charged with making recommendations to the full Board and to examine the issues more in depth, to hear from people that might be affected and to ultimately bring to the Board recommendations with respect to mandatory immunization vaccines for health care workers. We looked at the implementation from a population standpoint. In other words, the definition of what a health care worker is who would actually be involved in this mandate, what institutions or what groups. We looked for fiscal support, financial support for the institutions that would be involved in this mandate. We also looked at the definitions of exemptions. At our meeting later today we will further break down this information into the definitions and then present them to the Board.

Ms. Walker found Dr. Fincher's comments on page 7 of the minutes to be very profound concerning the cons of the personal freedom issues and that the medical profession is absolutely doing the right thing regarding patient safety, as far as the moral, imperative, ethical patient care,

clinical outcomes, even the finances are all positive for requiring flu shots. I think that is a very insightful statement, and I just wanted to point that out. The focus of the committee is basically patient safety.

Dr. Zini asked if the vaccine were to become mandatory, how would you enforce it and what would you do if a person decided to not do it. Ms. Walker stated at this point she didn't have a good answer to that.

Dr. Fincher responded to Dr. Zini's question by stating that we haven't decided what to recommend to the Board yet but what people have done elsewhere is if a person declines for any reason to take a flu shot, they are required to wear a mask when they are in patient controlled areas or patient care areas, and that has resulted in a very high rate of compliance with the shot.

After additional discussion among the members, Mr. Hogan stated that we are in the preliminary stages of the meetings and we have another meeting scheduled today at 5:00 to further discuss these issues. Very good issues have been raised this morning, some of which we have previously taken under advisement. Email me, if you would, any additional issues, concerns, or questions, and we will make sure to address those during our meeting.

PRESIDENT'S REPORT

President Jones thanked everyone for their discussion of the agenda items and particularly Ms. Walker for being chair of the subcommittee and sharing her report on the mandatory flu vaccinations.

DIRECTOR'S REPORT

Dr. Halverson stated that the discussion concerning the flu vaccine underscores the importance of our childhood school based immunization program. One of the aspects of the increase in the tobacco tax was to pay for the school based vaccination program. Arkansas leads the country, along with a couple other states, in terms of our progressive school based vaccine programs, and we should be proud of the fact that we are taking the lead in this area.

In addition to the study that is going on by the subcommittee of the Board related to mandatory vaccine for health care workers, the Health Department has recently announced a mandatory flu vaccine policy for its employees. We modeled the policy after the policies in place at UAMS, Children's, St. Vincent's, and Baptist Hospital, we've made a clear distinction in saying to our employees "whether you take the vaccine or not, you must be interested in patient safety." We are recommending that all of our employees take the vaccine. If an employee chooses not to take the vaccine, they must request a waiver for the duration of the flu season, through March 31.

We have a great program over the next couple of days. We have two important speakers, Dr. Dan Rahn, Chancellor at UAMS, and Dr. Tom Kimbrell, Commissioner of Education. The Governor has asked Dr. Rahn and me to co-chair the committee looking at workforce strategies as part of the state's health futures initiative. Dr. Kimbrell will provide a perspective relative to a change in the Board of Education's rules relative to physical activity. The rules that are in

place relevant to physical activity require the Board of Education to consult with the Board of Health relative to changes in this revision. It does not require us to approve or deny these changes but simply to provide consultation.

Tonight Jared Cleveland, Superintendent of Schools in Lavaca, will give a presentation relative to a school-based wellness center he has in place in Lavaca.

A number of our Board members also serve as county health officers and I want to mention that this was the sixth year that we have brought together our county health officers, who are physicians, for continuing medical education. This is a three-day program and if you are interested in attending future meetings, please let me know. It is basically a short course in public health, contemporary issues in public health, from bedbugs to expedited partner therapy.

Dr. Halverson also mentioned that the state's budget is tight and we have seen downturns and reductions and are now beginning to feel the effect of a tightening federal budget. The Health Department is primarily funded from federal sources. The Preventive Health Services block grant, which is about a million five, was defunded without notice the last quarter of the fiscal year. On behalf of the Health Department, I have sent letters to all of our delegation urging their support of the block grant program. It is the fundamental source of funding for our tuberculosis program, it greatly supports our sexually transmitted disease program, and a whole host of other infectious diseases. If you lose that funding, there is nothing else to take its place. I wanted the Board to be aware of the fact that this is not a situation to be in.

I would mention that I have asked provider groups in the state to submit names for appointment to a blue ribbon committee that will look at the designation of hospitals for purposes of designating newborn nurseries, neonatal intensive care nurseries. Currently, Arkansas is one of the few states in the nation that does not designate nurseries and this is a potential source of increased morbidity and mortality as far as newborns. Infant mortality is of significant concern to the state. I am asking the committee to bring recommendations for the institution of classification for nurseries in our state. The literature and evidence suggests that appropriate designation of properly equipped and staffed nurseries would be a substantial way in which to reduce the morbidity or mortality of newborns. We will be looking at that. It is important that we get input from experts throughout the state in that area. I have asked them to give their recommendations to me by the first quarter of 2012. Should they recommend the regionalization or classification it would, at least in my mind, come in the form of a recommendation for a new rule and we would come back to this Board for your discussion and ultimately for adjudication.

Also, I am in the process of asking the staff to draft a letter to be sent to the Medicaid director as well as insurance company executives related to an effort on the part of the Health Department to activate the reduction in early late term deliveries. There are substantial gains to be made by reducing early late term deliveries and specifically to reduce inductions prior to 39 weeks as well as caesarean sections. I just wanted you to be aware that I would be sending this letter based on strong evidence to support the fact that we need to pay attention to this. Our state, in addition to the other states in Region 4 of the six of the HHS regions, are working collaboratively in an effort to reduce infant mortality, specifically looking at reduction in inductions and caesarean sections prior to 39 weeks.

You have before you a copy of a letter I sent to John Selig relative to the health data initiative. The law provides for data to be shared among agencies. I want to complement Dr. Thompson and ACHI for the development of an incredible resource for the state. They have been able to pull together a data initiative that allows the combining and linking of data for policy analysis purposes. We want to make sure the data is safeguarded and is provided under the auspices of the data-sharing agreement law. The letter simply is technical in nature but essentially invokes the provisions of the confidentiality provisions of the data sharing agreement.

Mr. Hogan advised that the letter from Mr. John Selig of DHS requires a vote to accept and approval by the Board. Mr. Harper made the motion to approve the letter. After further discussion of the letter, Dr. Anika Whitfield seconded the motion and the motion carried.

Dr. Halverson mentioned that the Health Department was recently contacted by a county judge relative to the downturn in their budget; they have notified us of their intention not to continue supporting the maintenance and operation of their health unit by withholding payment that they have previously paid us relating to their utilities. In 1973, an agreement was made relative to this Board and the Legislature pertaining to an allocation between local counties and the support of local health units. That agreement means that the counties are responsible for the maintenance and operation and the construction of facilities in the counties. In part, we provide, through the Local Grant Trust Fund, funding to the county and they, in turn, get matching funds and so forth. As a part of the grant process, they agree to maintain and operate that building and as part of the agreement in 1973 they agreed to maintain the facilities. There have been numerous times in the last six years that counties have expressed an interest in withdrawing support. Our position has always been that we are unable to support the maintenance and operation of county buildings. Our budget is restrained substantially and we don't have the legal apparatus necessary to pay those bills. We don't have a choice but to decline to take up that responsibility. My hope is that we can resolve this matter without too much difficulty but I wanted the Board to be aware of the fact that this is the position the Health Department has taken. We have been in contact with the Governor's office to make sure we are all on the same page on this.

Dr. Halverson wrapped up his report, and thanked everyone for their attendance at this work session.

President Jones announced that the meeting was recessed at the hour of 11:45 a.m.

The quarterly meeting was reconvened at the hour of 4:45 p.m., on Thursday, November 3, 2011. The meeting was turned over to Dr. Tom Kimbrell for his presentation.

Dr. Kimbrell stated that our children need to be better prepared learners, better prepared citizens and more physically fit individuals. We are working with all of the different divisions to make that happen. One of the things we have run into is that we have some problems with one of our rules and this rule involves the physical education requirement in the ratio and licensing of individuals in our elementary schools. There are two codes that deal with physical education and

physical activity. The physical education code deals with what we have to require in our public schools for physical education, and then Act 1220 of 2003 created the CHAC group. A few years ago the Advisory Committee recommended to the State Board that they approve the version of the rules that we are currently operating under. There are two sections that are most important, and not everyone is in agreement with these two changes. Section 9.04 requires that school districts employ one licensed or qualified physical education teacher for every 500 students in grades K-6. Right now a licensed physical education teacher, under our current requirement of teaching physical education in our elementary K-6 to students can serve 700 students and still do that. Our concern is we are going to require that our schools hire more physical education teachers when the standards don't require that, plus we believe there is a piece in the first statute that will not allow the state board to do that. Section 9.06 requires that beginning next year, all personnel teaching physical education in grades K-12 hold a physical education license.

In the statute under physical education there is a section that says that nothing in this section shall be construed to require any school or school district to hire personnel certified in physical education. We had that particular piece brought to our attention by some school districts who said when you implement your current standard; you are in violation of the law. Our attorneys looked at it and they agreed. What we are proposing is that the state board change the current requirement to require that qualified teachers teach physical education in our schools. We want to continue to work and preserve all the good work that the CHAC has tried to help us instill in our schools, and I believe they would agree, this state and our schools have made tremendous strides.

We are recommending to the state board that we delete the two sections so we can comply with the law. Our only concern is that we don't believe that we are going to see this move backwards. We have a handout that shows every school district in the state that has PE in elementary schools. It will show the numbers as to what we have. We will continue to monitor this and provide this to your committee, the CHAC committee and the House and Senate Education Committee and if we see that moving back, the place that picks this is not in rules and regulations, it's in legislation. If the policymakers feel that that needs to happen, then they can make it happen.

We are looking at maintaining the maximum student to adult ratio of 30:1, at least one of the adults supervising PE must be a licensed PE teacher or a licensed elementary teacher, there will not be a paraprofessional out there teaching PE. If you look at the report, you will see that probably 87% are licensed PE teachers. Classified personnel may assist in fulfilling the 30:1 student to adult ratio requirement but they will only be able to help in supervision.

In Grades 7-12, physical education instruction must be taught and provided by a licensed physical education teacher.

We have tried to be consistent with what was intended in the purpose of the rules and the enabling legislation that we have under PE. We want our schools to maintain and continue to increase the number of PE teachers.

We handed out a letter, which Dr. Halverson and I talked about, going to every superintendent in the state and every director of every charter school, and an explanation of why we are changing this rule; not to satisfy one or two people or anything of that nature, but to be in compliance with the law, but we are also doing it in a way to encourage them to continue to improve the number of PE teachers that they have in their elementary schools and continue to try to find ways to increase the number of activity hours that they have, as well as PE.

Paul had asked that I come and explain our purpose in what we are doing, from my perspective, and the perspective of the Department of Education, it is not an effort to move backwards, it is not an effort to cut physical education in our schools, it is an effort to get into compliance with the law, and then if the law is a bad law, then we need to work together to change the law.

Dr. Halverson commented that there are a lot of things that we are doing in education and health that are at an important intersection and what we have come down to is an important compromise that will allow us to move forward on these rules. Dr. Yamauchi added that he supported the changes.

Dr. Thompson stated the rule of 30 minutes of physical activity every day was relinquished to get higher standards for the PE teachers who are now in opposition to the legislation that this is a compromise to navigate out of. There is some reason for the Child Health Advisory Committee's opposition to this compromise. In Section 7.01 there is a definition of minutes that says for an elementary school, Grades K-6, it requires 60 minutes of PE and 90 minutes of additional physical activity. That has been interpreted to be 60 minutes of the 90 minutes or is that 150 minutes total?

Dr. Kimbrell responded that it was 150 minutes total. There was no intent of changing that, still have the activity minutes required, so a total of 150.

Dr. Zini asked if the activity level would go down because of these changes and Dr. Kimbrell said it would not. The number of minutes will remain the same, activity and PE; that is a requirement.

Dr. Bates stated that you told us that Grades 7 through 12 must have a certified PE teacher, is that in conflict with your previous law? Mr. Kimbrell stated it was not.

Dr. Kimbrell stated he believed strongly that if this needs to be changed, the law needs to be changed, and the 2013 session is the place to change it.

Dr. Halverson restated that at this point in time, we are hearing from the Board of Health, you've heard from the Child Health Advisory Committee, and it is my understanding you are going to reopen a comment period for the Board of Education to consider this rule. Mr. Kimbrell stated that he was. Dr. Halverson stated that he doesn't want anyone to think that he is recommending that you go backwards, but believes this is an important pass forward and he very much appreciates and acknowledges the work of the Child Health Advisory Committee. They worked very hard and he respects their position. Dr. Halverson invited Dr. Kimbrell to come back next year at this time and look at the data.

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President Jones asked for a motion to adjourn, Dr. Whitfield made a motion to adjourn, Dr. Zini seconded and the motion carried.

The meeting was adjourned at the hour of 5:15 p.m.

Respectfully submitted,

Paul K. Halverson, DrPH
Director and State Health Officer