

**SPECIAL CALLED MEETING OF THE ARKANSAS STATE BOARD OF HEALTH**  
**July 2, 2010**

**MINUTES**

A “special-called” meeting of the Arkansas State Board of Health was held on Friday, July 2, in the Briefing Room at the Arkansas Department of Health, 4815 West Markham, Little Rock, Arkansas.

Alan Fortenberry called the meeting to order at approximately 9:15 a.m. Mr. Fortenberry asked Dr. Halverson to call the roll.

Present

Alan Fortenberry, P.E., President  
Susan Jones, MD, President Elect (phone)  
Miranda Childs-Bebee (phone)  
Lawrence Braden, MD  
Glen “Eddie” Bryant, MD  
Clark Fincher, MD  
Larry Fritchman, DVM  
George Harper, JD  
Paul Halverson, DrPH, MPH  
Anthony N. Hui, MD  
Tom Jones, RS  
Jim Lambert (by phone)  
Marvin Leibovich, MD  
Linda Lehing  
John Richard Page, PD (by phone)  
Mary Beth Ringgold  
Joe Thompson, MD  
Patricia Westfall-Elsberry, OD (phone)  
Anika Whitfield, DPM  
Terry Yamauchi, MD

Absent

William Lagaly, DO  
Alexander Rejistre, Sr., DC  
Rev. Dwight Townsend  
Peggy Walker, RN, MSN

Guests

David Johnson,  
State Senator  
Donna Hutchison,  
State Representative  
Marcus Vaden,  
Prosecuting Attorney  
Association  
Cora Gentry,  
Arkansas State Police

Dr. Paul Halverson advised Mr. Fortenberry that there was a quorum.

Mr. Fortenberry presented the item on the agenda, “the Proposed Emergency Rule Pertaining to Synthetic Marijuana Products,” marketed under the names such as K-2, spice, etc. Mr. Fortenberry asked Dr. Halverson to address this rule.

Dr. Halverson thanked the Board for being present for this “special-called” meeting. He reported that the Arkansas Department of Health staff has done extensive research looking at the prevalence and risks related to K-2 and its derivatives. He said that it has been determined that the public is at a significant risk based upon this assessment, and it is agreed that the board should take action. He presented a prepared resolution for

the Board's consideration. He stated that this regulation is really a partnership with the criminal justice system, and the response related to enforcement is not intended to place people into the criminal justice system, but to educate the public about drug abuse and elicit drug use, especially by children. It is intended to interrupt the supply chain at the point of sale, not to imprison or punish anyone with an addiction. The public health response will not stop with the adoption of this regulation.

Our web page will be utilized to inform the public about this and other addictive drugs, and a list of frequently asked questions to educate the public about the harmful qualities of K-2 will be on the web page. He said that work will continue in local communities with our 94 local health units and our Hometown Health Initiative Programs to provide information and education to local businesses and residences. We want to work with the local communities where our public health staff live and where they are fully invested. This is intended as a tool to assist cities and counties that would otherwise be faced with the prospect of developing their own rule, regulation or ordinance, and we really believe that this statewide approach is the most appropriate given the magnitude of the issue. It will reduce the difficulty of having each municipality being responsible for crafting and adopting local ordinances, which may or may not be challenged in court.

Dr. Halverson stated that the Board would respond to questions at the conclusion of comments, and that Dr. Joseph Bates, Senior Medical Officer and Deputy State Arkansas State Board of Health

Health Officer, along with Mr. Rick Hogan, General Counsel, and other members of our senior staff are available to answer questions.

Mr. Fortenberry stated that the Board was informed on this matter at the quarterly meeting in April.

Dr. Clark Fincher made a motion that the Board find that imminent peril will result to the public health, safety, and welfare, without the immediate adoption of the rule pertaining to the sale and distribution of synthetic marijuana products in Arkansas. He reported that the Board has found that synthetic marijuana products are currently being sold as "not being for human consumption" but all indications are that they are being consumed by children, and others, despite the fact that these products have not been approved by the FDA. These products contain extreme potent variations and contain mixtures of various chemical compounds in variable doses. The specific biological effects and interactions are largely unknown. The Board should regulate these products as a proper control of chemical exposures that may result in adverse health effects to the public, as authorized by Ark Code Ann. § 20-7-109 (a)(1). Additionally, Dr. Fincher moved to adopt the rule as an emergency. He further moved to initiate the rulemaking process, and invited public comment regarding the permanent adoption of the rule as soon as practicable since the Emergency Rule is only effective for 120 days.

Dr. John Page seconded the motion.

Mr. Fortenberry called for open discussion of this matter from those signed to speak. He acknowledged Senator Johnson.

Senator Johnson expressed his appreciation to the Board for discussing this matter. He stated that information is still being compiled about K-2, but its effects are very troubling and that the drug has resulted in admissions to emergency rooms, worrisome effects on people, and because of the synthetic nature and unregulated state of the drug, presents an unpredictable potency. There have been reports that contemplate a wide range of effects of the drug, which alone should be enough to alarm all of us. He applauded the Board for considering the rule and that the ideal situation may be to schedule the drug and permit law enforcement to undertake enforcement of it as an illegal drug. That possibility is not open because of statutes involved. He stated that he is confident that the problem will be addressed early in the next legislative session, but for the time being, the proposed emergency rule is an excellent approach. It targets those who manufacture and deliver the drug, which with any illegal drug is the real root of the problem. He said there has been some discussion about whether this drug should be scheduled as a Schedule 1 drug and the Attorney General has addressed that as a possibility, but he urged the Board not to consider that possibility. The penalties associated with Schedule 1 drugs are too harsh (in his opinion) even for K-2. He again urged the Board to adopt the rule.

Mr. Fortenberry then introduced Mr. Marcus Vaden representing the Prosecuting Attorney's Association.

Mr. Vaden stated that he represents the prosecutors around the state and they are overwhelmingly in support of the Emergency Rule. A number of the counties in the state have passed ordinances to help combat use and abuse of K-2. It is seen predominately in teenagers and college students and we have seen the effects. Some dealers, particularly marijuana dealers, stop dealing marijuana and start selling K-2, and in some cases are able to sell it for three times more than marijuana. It has also become available in convenience stores. There were reports from Conway Regional Hospital of people exhibiting symptoms of numbness, tingling, vomiting, agitation, hallucinations, tremors, and seizures. The police department in Conway made its first arrest and the young man was experiencing these symptoms. He stated that his district has requested that two counties pass ordinances to make it illegal and a number of cities and counties in the state have done this. Prosecutors see this as a state problem. He said that it is rare that prosecutors get to be proactive in a problem and this presents a way to take action. Further, he expressed the need to have some enforcement provision in place prior to the start of School in August or September. He further stated that this is not an issue of wanting to put people in jail, but a way to get the information out there to the kids, parents and the community that this is a dangerous problem. He said that it can be stopped by ordinances in his counties, but when that happens they will go to neighboring counties to buy it. He urged the Board to pass the measure.

Mr. Fortenberry recognized Representative Donna Hutchison.

Representative Hutchison expressed the importance of this issue and the input that she has received from her constituents. They reported to her that many were concerned when they found out that their teenagers were going to K-2 parties and even primary children were wandering in and out of those parties. They were shocked when they found out that it was legal. They begged those selling K-2 to stop selling, but they do not have the law behind them. One parent said that if an adult gave a can of beer to a child, it would be a felony, but adults are handing out K-2. Missouri has banned K-2, so northwest Arkansas is the last place to buy it before you enter Missouri. Cities and counties have been passing a ban, but each has different penalties. She expressed her desire for the Board to make it illegal quickly because there are parents out there that are concerned about their children.

Mr. Fortenberry recognized Lt. Cora Gentry representing the Arkansas State Police.

Lt. Gentry said that the State Police support regulation of any substance that is a danger and can impair drivers as they operate motor vehicles on the state highways and roadways.

Dr. Halverson reported that the Board has received support from the Arkansas Sheriff's Association, the Municipal League representing mayors in cities and towns throughout the state, the Oil Marketing Association representing the marketers associated with oil and gasoline throughout the state, as well as the Grocer and Retail Merchant Association.

Mr. Fortenberry asked if there was anyone else that would like to speak on this matter and if not he would entertain questions from the Board members.

Dr. Larry Fritchman asked where the drug is sold and what is its use?

Mr. Hogan said that the drug is sold with a label that says it is not for human consumption. It is normally sold at what is called "head shops" and convenience stores. As far as the use, other than the description "not for human consumption," there is no marketing or labeling that goes with the product.

Mr. Hogan said that the motion made by Dr. Fincher has two parts to it. First, this rule would be adopted as an emergency that would go into effect as soon as the Governor signs it today. Second, it would initiate the rulemaking process on a permanent basis since an Emergency Rule expires after 120 days according to Arkansas Law.

Dr. Eddie Bryant asked if there is a specific chemical substance name or if this is Ojust an herbal medicine mixture and it goes by the name K-2.

Dr. Bates responded that this is a chemical and its structure is well defined, actually a whole series of them, maybe as many as 50. They are made in the laboratory and we refer to this substance as a chemical, not a drug. It has been used to study how the cannabinoids sit down on the receptor sight in the brain that produces the effects that

we know about with marijuana. Effects from these substances that have been reported are a hyper-excitability state, high anxiety, rapid pulse, high blood pressure, delirium, confusion, and convulsions. One such report in Arkansas was reported when a sixteen year old girl had a seizure. This was not witnessed by a health professional, but it was witnessed by people at the school. The chemicals are very organic and all have one part of the molecule in common that sits down on the receptor site in the brain.

Dr. Marvin Leibovich requested to expound on Dr. Bates' comments. He said that there are four actual chemical classes of these artificial cannabinoids. The problem is that there are probably at least a hundred and probably more being designed all the time that fit into the four classes. He said that he is voting for this ban, but it is with great reservation since this is based on 26 reported cases. He stated that there are approximately half a million ER visits in this state a year and about 8 percent of all emergency department visits are secondary to alcohol use and abuse. If we have eight percent of half a million (40,000) related to alcohol, are we going to say that there is an emergency that exists because of 26 cases? He said that this needs to be studied, and that the problem he sees making this different than marijuana is that almost all of these are complete agonists and marijuana is an incomplete agonist or partial agonist. The danger is that we do not know from package to package what is in these brands and he believes it needs to be controlled but objects to the fact that we are trying to say that this is an emergency condition. He said that he believes that it is a political condition, and that political pressure is on the Board of Health to do something. There needs to be more study.

Mr. Fortenberry asked if there were more comments.

Dr. Joe Thompson asked Mr. Hogan what is the current state of medical marijuana use in the State of Arkansas? He stated that this is not a drug; it is a chemical compound and should be considered separately.

Mr. Hogan answered that this should not be confused with medical marijuana. Marijuana is still a Schedule 6 drug and is illegal.

Mr. Fortenberry asked for further comments or questions.

Mr. Fortenberry called for a vote regarding the motion that was made by Dr. Fincher and seconded by Dr. Page. The motion carried with one nay from Dr. Leibovich.

Dr. Halverson thanked the Board members for their attention to this matter and stated that the staff is currently considering the agenda for the July meeting and it may be held by phone or cancelled for lack of agenda items. Board members will be advised.

There being no further business, Mr. Fortenberry adjourned the meeting.