

**MINUTES OF THE EMERGENCY MEETING
ARKANSAS STATE BOARD OF HEALTH
May 15, 2020**

MEMBERS PRESENT

Phillip Gilmore, PhD, President
Balan Nair, MD, President-Elect
Nathaniel Smith, MD, MPH, Secretary
Perry Amerine, OD
Marsha Boss, PD
Eddie Bryant, MD
Lane Crider, PE
Dwayne Daniels, MD
Brad Erney, DMD, PLC
Melissa Faulkenberry, DC
Darren Flamik, MD
Thomas Jones, RS
David Kiessling, DPM
Donald Ragland
Mike Riddell, MD
Clay Waliski
James Zini, DO
Catherine Tapp, MPH
Terry Yamauchi, MD
Susan Weinstein, DVM
Anthony Hui, MD
Stephanie Barnes Beerman

GUESTS PRESENT

Laura Shue, General Counsel
Reginald A. Rogers, Deputy General Counsel
Brooks White, ADH, Administrative Law Judge
Brian Nichols, ADH, Administrative Law Judge
Connie Melton, ADH, Director, Center for Health
Protection
Lynda Lehing, ADH, Branch Chief, Health Statistics
Jennifer Dillaha, ADH, State Epidemiologist
Tressa Williams, ADH, Legal Support Specialist

MEMBERS ABSENT

Greg Bledsoe, MD, MPH
Vanessa Falwell, ARPN

MINUTES OF THE ARKANSAS STATE BOARD OF HEALTH MEETING

An emergency meeting of the Arkansas State Board of Health was held via telephone conference on Friday, May 15, 2020, in Conference Room 2410 at the Arkansas Department of Health in Little Rock, Arkansas.

CALL TO ORDER

Dr. Phillip Gilmore called the meeting to order at approximately 3:02 p.m. and asked for a roll call. General Counsel Laura Shue conducted the roll call.

NEW BUSINESS

Collecting COVID-19 Information on Birth Records

Lynda Lehing, Branch Chief for Health Statistics, requested approval to collect the mother's COVID-19 status on the birth record. The National Center of Health Statistics suggested the language to put in the block that ADH already collects: infections present and/or present during the pregnancy. ADH will be adding it there on our electronic record and collecting whether it is confirmed or probable. Two separate blocks are there on the form. We will be collecting what trimesters or at delivery when the COVID-19 was present. If they do not have any of those infections, it will be none. The vendor has already been working on this so we did test it and it seems to be working and will be probably ready if we get the go ahead to start it next week.

Dr. Riddell moved and Dr. Weinstein seconded to adopt this measure. Motion carried.

Secretary of the Department of Health Directives

Ms. Shue stated the initial directives were first introduced by the Secretary in March. ADH is asking these to be grouped together collectively and if there are any specific questions, we will try to answer those. The directives deal with long-term care facilities, casinos, business closures, specific directives to barbers, and massage therapy clinics for which we license. Also dentists, limitations on gatherings, and then some of the new directives that have been targeted toward reopening businesses. New directives added since the meeting agenda was sent include pool and casino reopenings and large indoor venues. ADH staff can answer any specific questions you may have but we would appreciate a vote to help ratify these directives and any supportive motions you may have.

Dr. Gilmore asked if it is the pleasure to do them all at once. Mr. Rogers answered yes.

Dr. Gilmore asked for a motion. Dr. Hui motioned to ratify the directives.

Dr. Yamauchi asked if there is a change to a directive, specifically about pushing back on reopening on certain places, would it require another motion or directive.

Ms. Shue stated there are some businesses and entities that are still closed but as far as the reopening, new guidelines or directives are issued and posted on the website.

Mr. Rogers stated if there is a substantive issue, it may require another vote but hopefully we will not have to approach the Board before then but Dr. Smith and Ms. Shue will make that decision.

Dr. Tapp asked for directives on how the virus is reacting with chlorine in the pools, specifically home pools.

Dr. Smith replied there is no concern about water borne transmission. The chlorine levels in a pool may or may not be high enough to deactivate the virus but he does not have the data on that. The concern with pools is the crowding of people to where they might transmit by being in close contact with each other. If it is a personal pool, that really would not be an issue because presumably the people coming in contact are already household members.

Dr. Amerine asked as a Board member and responsibility as a healthcare Board, is the Board review after the fact on some of this and if so, what are the provisions that is governing the legal right for the Board to take action and how long does that right exist for us. Are we responsible for looking at directives concurrently with the leadership or approving of their actions after the fact?

Ms. Shue stated she is making sure the Board is aware of the directives as soon as possible. They are also posted on the website. The statutory authority provides for the State Board of Health to protect the public health and safety of all Arkansans. Through the rules that are promulgated through the statutory authority, you have conferred that power to the Director, who is now the Secretary of Health. Through the Rules of Reportable Communicable Diseases, the Director as the Secretary of Health has the power to issue these directives and guidelines.

Dr. Amerine stated we are being informed of what directives have taken place and documenting that we have been aware of the Director's actions, is that correct. We are not approving or disapproving what the Director does.

Ms. Shue stated you can always contact the Legal Department anytime if you have specific concerns about specific issues in the professions or entities for which you represent. We are trying to be responsive to your concerns. We also ask for your guidance and counsel on many of these directives. If there is a specific area that you represent that you have a concern about, we are open to all of your helpful guidance and appreciate all your input.

Dr. Amerine stated he is not disagreeing with any of the directives. As Board members, he wants full knowledge of what they are voting on with this motion. We are not approving necessarily but are affirming that these directives have been made. Is that true.

Mr. Rogers stated that it has always been that the Board of Health, according to Arkansas Code 20-7-109 and 110, statutorily supports and approves of the actions of the Director. Because of the urgency that can happen, and it is certainly applicable in this pandemic, the Legislature and the Board approve Dr. Smith to have the ability to try to control outbreaks and other matters such as this pandemic because action has to be taken quickly and not have to convene 20 or more people.

Dr. Amerine stated we are just offering our concurrence that we are performing a function and we are being made aware of the directives. As a Board member, his responsibility right now is to receive the information and approve that those directives are acceptable to me as a Board member and my other Board members. Is that true?

Mr. Rogers stated that is his view of it.

Dr. Gilmore responded to Dr. Amerine that the Board is basically ratifying the directives that have been done.

Dr. Amerine asked as far as Dr. Smith is concerned, how long does the State Board of Health provide for the Director to perform this very vital function and leadership that he is offering. Is this an unlimited amount of time or, like some states, after a certain period of time the Legislature goes ahead, convenes, and say we need to carry on with the State Board's approval for the Director to do the things that he is doing? I am just trying to get clarified what our Board is responsible for and how long that could go on.

Mr. Rogers stated it is until the danger or outbreak has been remedied or suppressed. He does not recall the statute having a time limit as to take such actions until the outbreak is suppressed.

Dr. Smith stated his presumption is that would extend as long as the Governor has the state of emergency. The Governor extended that 45 days at the beginning of the month. That will run until the middle of June unless he extends it further.

Dr. Amerine asked whether the state of emergency allows the Board to act to grant the powers.

Mr. Rogers stated the Board of Health's statutory authority is coupled with the Governor's emergency powers, but until the outbreak is suppressed, we must assume it would be continued to be extended.

Dr. Amerine stated the reason he asked the question is because some states, he was hearing, after a certain period of time, the representative of the state would be responsible for extending the authority to those regulatory agencies but as far as he knows in Arkansas, which does not exist. Is that correct?

Mr. Rogers stated he is not aware of that. We report to the Legislature as well as the Department of Health directly reports to the Governor but I do not recall that provision in the Legislature.

Dr. Amerine stated he realizes it exists in some states but not necessarily in Arkansas.

Dr. Daniels stated we are having to do preoperative COVID testing for elective cases. He is wondering what that is being used for? Why do we have to do that?

Dr. Smith replied the reason for that is to try to keep the patient and staff as safe as possible. We know that asymptomatic transmission is a concern and that although PPE use dramatically decreases the risk of transmission, it does not eliminate it. We have seen that by healthcare workers in hospitals already here at Arkansas who have become infected even though they were supposedly using PPE. No one is perfect and especially those who are not used to full PPE all

the time. The purpose there is to try to identify those patients who are infected with COVID-19 or at least have enough virus shedding to be at risk so that although we would want to practice precautions with every patient as if they could be infected. If we knew a patient had been infected, that would help not only inform the way that the caregivers protect themselves and other patients but also would give insight. For example, there have been a number of cases where pregnant women have come in with asymptomatic infection and then at the time of delivery or C-section, have become suddenly very symptomatic and knowing their status before that could have been helpful in terms of the management of those patients as well.

Dr. Daniels stated in contrast to non-elective procedures, there is no mandate to test them and it is kind of the same risks to the healthcare community.

Dr. Smith stated for an emergency procedure, you will not have time. Basically, that is meant to extend to any case that you can schedule. If you can schedule it in advance and do testing before, that is the expectation. If it is an emergency, obviously you would not want to hold off an emergency procedure while you were waiting for a test result.

Dr. Daniels asked if Dr. Smith thought this would end when the state of emergency ends.

Dr. Smith it is hard to make predictions about the future. I would expect us to do it as long as it appears necessary. If we do not have a problem with COVID-19 anymore, then we would not do that. What I am guessing though is that it will probably be here with us for a while and that we will probably be doing similar screening in more settings rather than fewer. Already we have made recommendation and are preparing a guidance document suggesting that hospitals screen all admission, not that they wait to admit them until they get the results but they screen them all on admission. We have already provided guidance that all pregnant women, when they come into labor and delivery, be screened and some hospitals have already been screening all their admissions. I anticipate that we probably will do more screening before we are able to back off and do less.

Dr. Bryant stated the 48 hours is very difficult. The rapid sequence test the hospitals have, they do not want to use them on elective procedures. They do not have enough to even cover the people in the hospital or just use them on elective procedures there. ASCs are left out in the cold. To get a patient to come 60 miles to do a test that you don't know if you will get back in 48 hours, I personally know of instances where people have been outside of the 48 hour window three times and had to be retested. If you will just give us 5 – 10 hours more it would make things a lot more comfortable for the patient. I don't think the virus has that kind of clock on it at 48 hours all of a sudden it turns on or turns off, 48 hours or 14 days. Five or ten hours more leeway in that window would definitely make a huge difference to us getting these elective procedures and getting the test done and being able to do the procedure after the test is done. We still have no ability for the rapid test for most places because the hospitals have reserved that for more of their inpatients and patients they have to test.

Dr. Smith stated that's why we have extended that. I still would recommend when possible to do it within 48 hours but we have made a change to that where it is not possible then within 72 hours. That gives you an extra 24 hours to do that. That goes into effect Monday. I announced that earlier this afternoon.

Dr. Bryant said that will help a great deal.

Dr. Amerine commented about these critical access hospitals in the rural areas and you are addressing, Dr. Smith. Even though I am not in a rural area anymore, those hospitals existence depends upon a lot of these elective procedures. I think that is outstanding that you have extended that period of time. The other thing, there are different types of surgeries. As far as Dr. Bryant is concerned, those patients are draped, faced and masked when you do cataract surgery. I know a lot of those programs are important to those rural hospitals. As we look at the dentists in those rural areas that can do all those elective procedures without a COVID test, then it might be something to consider that certain procedures like cataract surgery, they have that added protection of the patient being draped and they can do social distancing in segregation in the waiting type area.

Dr. Smith stated that the restrictions on elective surgery and the requirement for the testing has never applied to the rural hospitals, hospitals under 60 beds. Those have always been exempt from that. We recommended that do it whenever possible but recognizing that many of our rural areas are at lower risks and that the testing is harder to obtain in those settings, they were never included. Although I would hope that rural settings where that is possible that they would attempt to do that to protect their staff and protect their patients. You get one case that comes through and could shut down an entire hospital or clinic.

Dr. Amerine seconded Dr. Hui's motion to ratify the directives. Motion carried.

Governor's Executive Orders

Ms. Shue noted that another executive order has been issued since the agenda was sent out. These are found on the Governor's website and also show through a timeline how Dr. Smith and the Governor have been working together issuing the executive orders for the public health emergency in conjunction with health directives. The executive orders are for review only.

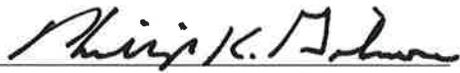
New Business

Dr. Gilmore asked for any new business. Mr. Rogers stated we are in charge of enforcement and really appreciate the Board's and the County Health Officers' support. Please continue that support. We have had a lot of compliance and Dr. Smith is best to speak to that. Though we do encounter individuals who are positive that we try to make sure they are quarantined and isolated and sometimes we might have to contact you and also businesses that are not compliant, we might have to ask for your assistance.

Mr. Crider also noted that as these businesses reopen, there has been a notice that has been put in .pdf format on the website regarding the reopening of facilities and the testing, the flushing of the building premises all the water lines and such. In order to get those samples in and done, they need maybe some additional prodding or information out there on making sure that they provide themselves enough leeway to get those test results back prior to reopening is important.

Dr. Gilmore commended the staff for a job well for staying on top of things during this pandemic.

Dr. Zini moved that the meeting be adjourned at 3:33 p.m.



Phillip Gilmore, PhD, MS, MHA
President
May 15, 2020



Nathaniel Smith, MD, MPH
Secretary of Health
May 15, 2020

