

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

August 1, 2019

MEMBERS PRESENT

James Zini, D.O., President
Nathaniel Smith, M.D., MPH, Secretary
Phillip Gilmore, Ph.D., President-Elect
Susan Weinstein, DVM
David Kiessling, D.P.M.
Thomas Jones, R.S.
Marsha Boss, Pharm. D.
Greg Bledsoe, M.D.
Terry Yamauchi, M.D.
Perry Amerine, O.D.
Lawrence Braden, M.D.
Mike Riddell, M.D.
Anthony N. Hui, M.D.
Vanessa Falwell, APRN
Brad Erney, DMD, PLC
Lane Crider, P.E.
Mr. Donald Ragland
Darren Flamik, M.D.
Balan Nair, M.D.
Greg Ungerank, DC

NOT PRESENT:

Catherine Tapp, MPH
Glen "Eddie" Bryant, M.D.

GUESTS PRESENT

Reginald A. Rogers, Deputy General Counsel
James Bledsoe, M.D., Medical Dir., EMS/Trauma
Marisha DiCarlo, Ph.D., Center Dir. Health Pro
Kristyn Vang, Cancer Epidemiologist
Jeff Stone, ADH, Director, Engineering Section
Dr. Naveen Patil, M.D., Medical Dir., Health
Protection - Infectious Disease Branch
Jamie Turpin, ADH, Pharm.D, PDMP Admin.
Alex Hooper, CPH, ADH
Matt Gilmore, ADH, Boards and Commissions
Haley Ortiz, ADH Substance Misuse/Injury Prev.
Richard McMullen, PhD, ADH Assoc. Dir. for
Science - Center for Local Public Health
Martin Nutt, ADH, Water Training and Cert.
James Joiner, PE, ADH, Building/Supply Man.
Joy Gray, TTS, ADH, Branch Chief TPCP
Shelly Matthews, ADH, Women's Health
Rhonda Kitelinger, ADH, Family Health
Becky Bennett, ADH, HFS, Section Chief
Jane Gaskill, ADH, HFS Attorney
Cristy Sellers, ADH, Center Director Health Adv
J. F. Dunn, Newton Co.
Joe Bates, MD, ADH, Senior Public Health
Advisor to the Director
Molly Phares, ADH, Health Program Specialist
Rhonda Brown, ADH, Cancer Section Chief
Lynda Lehing, ADH, Branch Chief Health Stats
Shane David, Pharm. D., Dir. Pharmacy Services
Namvar Zohoori, M.D., Chief Science Officer
Kelli Kersey, ADH, Director-Cosmetology Board
Laura Shue, General Counsel
Appathurai Balamurugan, MD, DrPH, ADH,
Deputy Chief Medical Officer
Mike Wilson, ADH, EOC Technical Manager
Shirley Louie, Center Dir. Public Health Practice
Connie Melton, Branch Chief, Health Systems
Brooks White, ADH, Administrative Law Judge
Brian Nichols, ADH, Administrative Law Judge
Chuck Thompson, ADH, Managing Attorney
Jessica Upchurch, Administrative Specialist
Theresa Griffin, Legal Services

MEETING OF THE ARKANSAS STATE BOARD OF HEALTH

The quarterly meeting of the Arkansas State Board of Health was held Thursday, August 1, 2019, in the Charles Hughes Board Room of the Freeway Medical Building in Little Rock, Arkansas.

CALL TO ORDER

President James Zini called the meeting to order at approximately 10:00 a.m.

APPROVAL OF MINUTES

Dr. Zini welcomed the new members to the Board and thanked everyone for attending the meeting. There was no attendance via teleconference. Dr. Zini asked for review and approval of the April 25, 2019, minutes. There were no corrections. Dr. Mike Riddell made a motion for approval of the minutes and Dr. Phillip Gilmore seconded. Motion passed.

OLD BUSINESS

Board Orientation and Photos

Ms. Laura Shue welcomed the new members and shared with the Board that the department conducted a successful orientation for the six new Board members. All new members were sworn in and photographs were taken, which can be found on the Secretary of State's website. Additional photographs were taken this morning of all Board members who needed a photo for the boardroom wall.

State email addresses were assigned to all new Board members at orientation. This was necessary for any communication from the public, especially during rules promulgation. Ms. Shue reminded the Board of the Freedom of Information Act and use of the State email address.

Ms. Stephanie Williams addressed the new Board members at orientation regarding the programs, branches and sections of ADH, and the Legal Department gave a brief overview of the bylaws, Board handbook, and the role and expectations of the Board.

Final Rule for Onsite Wastewater

Ms. Shue informed the Board that the Onsite Wastewater rule has been through the formal rule promulgation process. It was approved by the Board in 2017 and public comments were received during the public comment period. There were public comments received by email and at the hearing, which were placed in the Board packet. The Department wanted to make sure

that the Board was aware of these comments and any changes that were made pursuant to those comments prior to final approval of the onsite wastewater rule. Ms. Shue informed the Board that Terry Paul with the Environmental Branch would answer any specific questions.

Dr. Terry Yamauchi commented that, looking at the recent water problems, it seems like such a chore for regulations or inspections. He asked what is being done to assure that these things are taken care of—for instance, such as what is being done to help private homes on the river that have been flooded. Mr. Paul responded by saying, in a general sense, wastewater systems may be damaged by floodwaters. However, unless there is extreme erosion, once that system dries out it should function. There have been no problems or reports that he is aware of related to a flood of Onsite Wastewater systems. Onsite is designing systems to be in soil that are hopefully dry most of the time and can withstand the worst hydraulic conditions. Onsite does make people aware that when there are floodwaters there is potential for disease to be spread.

Dr. Yamauchi shared that he has been asked about the quality of water by citizens living downhill from those in flooded areas. They want to know if there is assurance that they can drink the water from their wells or if they should call the Health Department and request that the water be checked for safety. Mr. Paul stated that Dr. Baker made the lab available and also made it widely known that water samples would be taken at no charge to homeowners. A follow-up was even done for those who actually made that request.

Mr. Thomas Jones commented that he works directly with the marinas and two of them have totally flooded out. Motors have been replaced on sewer lip pumps, and at this time, all are back in order. Dr. Zini asked about contamination issues regarding those marinas. Mr. Jones stated there were no contamination issues – just dysfunctional for lifting sewage due to the fact that everything is uphill.

Dr. Susan Weinstein moved to accept the final rule for Onsite Wastewater. Dr. Riddell seconded. Motion passed.

Utilization Review Update

Ms. Shue reminded the Board of the approval of a waiver request for Summit and Arkansas Total Care, recommended by the Health Facility Services Utilization Review Program. They are PASSE providers that administers the Medicaid program under the federal laws and also state laws. There was a motion to approve the waiver on the condition that they provide assurance that they are in compliance with federal and state laws. In the meantime, Health Facility found that Summit was actually approved and certified as a private review agent and now have those certifications. Before, business was being conducted under a different name. Summit has been approved as a private review agent in Arkansas. Arkansas Total Care was provided a copy of the letter of assurance and it was submitted to the Board.

Dr. Amerine thanked Ms. Shue for her efforts in obtaining the letter of assurance. He stated that it was affirmation as far as provider participation and there is no issue with that. However, he thinks the language is still silent in the letter on discrimination with regard to reimbursement to providers acting within their scope of licensure. Dr. Amerine stated that is all he is asking for from the company is assurance. He asked Ms. Shue for her opinion on how to obtain clarity on this issue in the letter before voting to approve it.

Ms. Shue informed Dr. Amerine she could review the specific federal regulation as requested and will consult and confirm with Arkansas Total Care and Jack Hopkins, who is a former governor's liaison prior to updating the Board further in October.

Dr. Amerine made a motion that the Board approve Ms. Shue's suggested action. Consideration of the federal code provision could be considered at the next Board meeting. Dr. Gilmore seconded. Motion carried.

NEW BUSINESS

County Health Officer Appointment

Dr. Namvar Zohoori asked for the approval of Dr. Jacky F. Dunn for the County Health Officer for Newton County. Dr. Dunn has over 43 years of experience. He graduated from the University for Health Sciences in Kansas City, Missouri. He has served as a staff physician, emergency department physician, medical director, and medical review officer. He also served in the U.S. Army with the U.S. Army Medical Corp and has served as Secretary, Vice-President, and President in the Pope County Medical Society. He is a member of a number of other professional organizations and associations, including the Arkansas Medical Society.

Dr. Dunn is already active in the community doing the things that are desired by our county health officers. For instance, he is providing services at the Jasper school based health center.

Dr. Zini asked Dr. Dunn if he would like to speak. Dr. Dunn shared that he was the only physician in Newton County and he was honored to have been nominated for the County Health Officer position.

Dr. Riddell moved to approve Dr. Dunn as County Health Officer. Seconded by Dr. Braden. Motion passed.

Local Grant Trust Fund Recommendations

Mr. James Joiner presented two recommendations to the Board for Pine Bluff in Jefferson County and Arkadelphia in Clark County. Jefferson County wants to build a new building and it was recommended that funding be granted in the amount of \$300,000. Clark County wants to construct a small addition and do some major renovations and funding was recommended in the amount of \$200,000.

Mr. Joiner reported that projects in Clinton, Ozark, and Jacksonville are completed. North Little Rock and Pocahontas are the only two that are still outstanding besides the two new recommendations.

Mr. Joiner asked for any questions. Dr. Riddell asked when will the construction of the building in Pocahontas be finished. Mr. Joiner stated that the funding has already been approved. They are waiting on the county to sign and return the documents.

Dr. Nathaniel Smith commented that the funding for Jefferson County is very welcomed. The building presently occupied is an old school building in which the roof leaks, and it has been

reported that computers and other things have been damaged. It is very discouraging for staff to have to work under those conditions and also for patients to be seen in that kind of environment. Dr. Riddell reminded the Board that a new roof was installed on the building a few years ago.

Dr. Amerine asked what generated the funds for these projects and what is the budget on an annual basis. Mr. Joiner directed the Board to a mathematical figure at the bottom of the page in the agenda material, which was \$153,569.55, left from fiscal year 2019. He stated that the Agency funds an additional \$600,000 from different sources each year. So the actual current balance since July 1 is more.

Dr. Zini asked for the source of the \$600,000 figure. Mr. Joiner stated the source was from record fees and when there is a shortfall, the Department makes it up from other sources.

Dr. Weinstein moved that the recommendation of the subcommittee for the grants be accepted. Seconded by Mr. Tom Jones. Motion passed.

Reappointment to State Committee of Plumbing Examiners

Dr. Richard McMullen asked for reappointment of Mr. Stan Stapleton to the Committee of Plumbing Examiners. Mr. Stapleton is currently serving as the Committee's journeyman plumber representative and he has served one 4-year term.

Dr. Amerine moved to reappoint Mr. Stapleton to the Committee of Plumbing Examiners. Seconded by Dr. Weinstein. Motion carried.

Recommended Members for Cosmetology Technical Advisory Committee

Ms. Kelli Kersey recommended appointments for the 2019-2021 Committee: District 1, Amy Lance and Lucilla Joplin; District 2, Carla Jones and Andrea Wilson; District 3, Candace Kenyon; and District 4, Tonya Boydston and Lois Ware. These candidates came out of 41 recommendations.

Dr. Weinstein asked if the listed names consisted of the full committee. Ms. Kersey stated she was correct. Dr. Zini asked if the vote was needed to reappoint the three new members or all the members. Ms. Kersey stated that the vote was for appointment of all the members.

Dr. Yamauchi reminded the new Board members that they were free to visit these committee meetings if they so desire. He commented these meetings can be quite interesting.

Dr. Weinstein moved to appoint all recommended members for the Cosmetology Technical Advisory Committee. Dr. Hui seconded. Motion carried.

EMS Proposed Final Orders

1. Charles Hawkins, Paramedic License #15348

Mr. Brooks White made a recommendation to the Board to adopt the Proposed Findings of Fact and Conclusions of Law and Order made by the three-member subcommittee after a June 18, 2019 hearing on the case.

Mr. White reported that on May 15, 2018, Mr. Hawkins was arrested and charged with rape of a ten-year old child, a Class “Y” felony. The Circuit Court of Drew County later entered an Order for *Nolle Prosequi* as to the charges. However, this was not the first time Mr. Hawkins had been charged with improper sexual conduct with a minor. He was formally charged in 2014 in the Circuit Court of Faulkner County with Second Degree Sexual Assault involving a minor under the age of fourteen. The conduct for which Mr. Hawkins was charged renders him unfit to competently and adequately practice as an EMS professional in the State of Arkansas.

Mr. White informed the Board that the subcommittee recommended that the Board enter an order revoking the Paramedic license of Charles Hawkins.

Dr. Nair wanted to know if any action was taken the first time around and the circumstances. Mr. White informed him that there was action taken. The police investigated the incident and the prosecutor brought formal charges against him, which means the prosecutor found merit to the case. Mr. White stated it was very difficult to get details on the case due to the passage of time. The individual who prosecuted the case is now an assistant U.S. attorney and not with the Faulkner County Prosecutor’s Office. The specifics of why that case was dropped is not known. However, in his general knowledge regarding sexual crimes against children, Mr. White shared that the cases are usually difficult to prosecute due to the nature of the alleged victims.

Dr. Zini asked about any former action from the Board. Mr. White stated he did not believe there was ever a formal disciplinary process initiated after the dropping of the charges. The second time, however, there was much more alarm.

Dr. Zini asked if Mr. Hawkins had opportunity to address this issue with the Committee. Mr. White stated that Mr. Hawkins was present at the hearings in June and that he is aware of the Findings of the Committee.

Dr. Zini asked if Mr. Hawkins was present or any representative for Mr. Hawkins present. Mr. White stated that Mr. Hawkins was not present and that he was not aware of any representative for Mr. Hawkins who was present.

Dr. Weinstein shared that she was one of the Committee members for this case. Mr. Hawkins was present at the hearing and he indicated that both times he was falsely accused and he knew coincidences don’t usually occur like that, but in his case, they did occur and the allegations were false. Dr. Weinstein stated that the Committee made its Findings out of an overabundance of caution. The Committee felt that the public should not have this concern. Dr. Zini asked if Mr. Hawkins was represented by counsel and was informed that Mr. Hawkins did not have counsel. He represented himself.

Dr. Amerine asked if the Department of Health or Board of Health could create a significant liability by denying someone the ability to work and make a living if it has not been proven that person has committed a crime. Mr. White stated that the Board has a right to initiate discipline under the rules and he assured Dr. Amerine that the Board always proceed under the disciplinary process of the rules.

Mr. Reginald Rogers shared that this question has been addressed in the past. He went on to say that the Board has immunity from lawsuits unless the Board does something intentional under Arkansas's immunity laws. Since his time at ADH, no Board member has ever been sued, personally or officially. Mr. Rogers encouraged the Board to search the Board of Health Handbook for further details on the subject.

Dr. Amerine wanted to clarify that he was not concerned about being sued. He just wanted to know the general legal principle relating to this type of issue. Mr. Rogers stated that he understood and then reiterated that Mr. Hawkins had every opportunity to present his own case. All due process has been given to Mr. Hawkins. He reminded the Board that Mr. Hawkins can still appeal the Board's decision to the appropriate circuit court.

Dr. Gilmore pointed out that along with Mr. White as the Board's counsel, there was also an administrative law judge at the hearing. Every process was clearly explained to Mr. Hawkins. Dr. Weinstein also informed the Board that the second criminal case against Mr. Hawkins was dismissed without prejudice, meaning charges could still be brought against him at a later time. Dr. Riddell added that the decision to revoke Mr. Hawkins's license was not an easy decision to make, but he feels it was the right one. He reiterated that the decision was made out of an overabundance of caution.

Dr. Amerine made a motion to accept the subcommittee's recommendation that the Board enter an order revoking the license of Charles Hawkins. Seconded by Mr. Crider. Motion passed.

2. Kendrick Campbell, Emergency Medical Technician License #31484 and Heather Nash, Emergency Medical Technician License #31199

Mr. White made a recommendation to the Board to adopt the Proposed Findings of Fact and Conclusions of Law and Order made by the three-member subcommittee after a June 18, 2019 hearing on the case.

Mr. White reported that on April 10, 2019, Kendrick Campbell and Heather Nash went together to the Emergency Department at Delta Memorial Hospital in Dumas, Arkansas. Ms. Nash was a paramedic student at UAM-McGehee and did her rotations at the hospital. Mr. Campbell was not a paramedic student at UAM-McGehee. The two licensees were coworkers at EZ Ambulance and arrived at the hospital in their EZ Ambulance EMT uniforms.

Mr. Campbell did not have a legal basis to observe patient care or view patient records, both of which he did while at the ER that day. However, the subcommittee concluded that he did not deceive the staff and that he was invited to stay at the ER that day to observe patient care. The subcommittee also concluded that Mr. Campbell's conduct was a violation, albeit unintentional, of the Health Insurance Portability and Accountability Act (HIPAA). It was concluded that Ms. Nash committed no wrongdoing. Mr. White informed the Board that the subcommittee recommended that the Board enter an order placing Kendrick Campbell on probation for a period of three months.

Dr. Zini asked if Mr. Campbell was a licensed medical technician at the time this occurred. Mr. White responded that Mr. Campbell was in fact a licensed medical technician when the incident occurred. However, you can be a licensed EMT and a paramedic student as well. Mr. Campbell

never told anyone that he was a licensed EMT. The hospital staff stated he gained admission by telling them he was a paramedic student at UAM-McGehee.

Dr. Weinstein shared with the Board how the committee arrived at its decision. First, the nurse who was at the ER testified by telephone and not in person. When this happens it can be difficult to fully understand the testimony. For instance, you cannot see facial expressions and things of that sort. Next, Mr. White presented a lengthy video from the ER. It was stopped at various points with accusations against Mr. Campbell. Mr. Campbell had the opportunity to refute those accusations, and did so very credibly. It was obvious from the video that the hospital welcomed him with open arms. He was in no way discouraged from being there. The testimony from Mr. Campbell and Ms. Nash was found to be very credible.

Dr. Boss made a motion to accept the subcommittee's recommendation that the Board enter an order placing Kendrick Campbell on probation for a period of three months. Seconded by Dr. Amerine. Motion passed.

Licensed Lay Midwife Statistics

Ms. Rhonda Brown presented the annual Arkansas Licensed Lay Midwife Data Summary report for the Board's review. Ms. Brown pointed out in her report that in the year 2017 there were 28 licensed lay midwives, and one hundred and eighty-six (186) clients delivered outside of the hospital with a licensed lay midwife in attendance.

Dr. Boss noticed in the report that there were seventy less babies born with lay midwives than in the four previous years. She asked if that was due to the clients transferring out of lay midwifery care before or during labor. She also added that seventy was a significant amount.

Ms. Joni Yarnell joined Ms. Brown to assist in answering Dr. Boss's question. She stated the transfer rates did not change significantly. The number was a result of fewer clients for the midwife group.

Tobacco Prevention and Cessation Program Strategic Plan

Ms. Joy Gray presented the strategic plan for tobacco prevention and cessation for the Board's review. Ms. Gray pointed out that the plan is an update from five years ago so there are overall changes but the main three goals are the same. They are the CDC recommended best practices. The objectives have been updated and some of the specific deliverables to be carried out for the next five years.

Dr. Zini asked if the plan required action from the Board or presented for information only. Ms. Gray stated it is written in the legislation that a strategic plan be in place and they will do their best to meet the goals. Dr. Zini again asked Ms. Shue if the plan required action from the Board. Ms. Shue confirmed that the plan was presented for informational purposes only.

Dr. Boss asked if the Board will continue to receive smoking statistics relating to children, such as the number of children not smoking and their ages, how many patches are given out, etc. Ms. Gray stated that the Board will continue to receive those types of statistics. Dr. Zini asked Ms. Gray to provide those statistics at the next Board meeting.

Dr. Nair wanted to know if all the percentages were added would the number of people using some form of tobacco be 40 percent. Ms. Gray stated if all the different types of tobacco use were added up, 40 percent could potentially be correct. Currently, Arkansas is much higher than the national average.

Dr. Nair asked if there was a weightage among Goals I, II, and III. Ms. Gray responded by saying there is not a weightage. These are just the top three recommended by CDC's best practice for tobacco programs.

Dr. Riddell suggested that nurse practitioners be integrated into the plan as part of one of the key strategies to promote quitting of smoking among youths and adults. Ms. Gray agreed and in fact informed Dr. Riddell that a number of local health unit practitioners have already been trained to be tobacco treatment specialists.

Dr. Boss asked if there is a current limit on tobacco cessation products if received from the Health Department. Ms. Gray verified that there is a limit. Currently, a person can receive two weeks of patches and two weeks of lozenges each month. Dr. Boss asked what would a person do at the end of two weeks if more of the product is needed. Ms. Gray stated that if a patient calls at the end of two weeks needing more, Dr. Bala makes the clinical decision to extend their supply as needed. Dr. Bala added that evidence shows cessation in two to four weeks from the start of the "quit" date. Dr. Zini also added that there is still long-term counseling. For example, a person can call the hotline and request assistance.

Mr. Crider wanted to know the number of 9-12 graders currently actively using the Electronic Nicotine Delivery Systems (ENDS). He also wanted to know the plan for reaching these students. He shared that he has recently spoken to a 10th grader and has learned that the use is incredibly high.

Ms. Gray stated the numbers are probably a lot higher than the numbers that are currently reported. Part of the reason for that is the children were asked the question without a clear understanding of the term "e-cigarette." So when the question was asked, the children did not consider the Jules product as an e-cigarette. Steps are now being taken to change some of the survey questions to better accommodate the children's understanding. Currently in use is a series of presentations geared for every age group from adults to elementary age children. The schools are also being provided sample policies to help them address this problem also. Tobacco Treatment Specialist Training is another program being offered to school nurses and counselors.

Dr. Riddell asked Dr. Bala if he sees tobacco use exceeding the use of marijuana as being part of chronic disease. Dr. Bala responding by saying the question was more of a leadership question. He stated that there is a marijuana section, but the two are very different. Dr. Smith commented that both would have to be carefully monitored, especially since legal medical marijuana is for adults and only in select cases for children's use. He stated that other states have expanded the use of legal marijuana, medical and recreational, for adults, and there has also been a large increase in the use of marijuana by adolescences and even children. At some point as marijuana use increases, as with any increase in addiction or disorders, it may need to be added to the menu of services of Be Well Arkansas. However, it is not offered at this time. Dr. Riddell shared that his concern was for use of these products by women during pregnancy. Dr. Smith agreed that it was a serious concern.

***ADE Rules Governing Nutrition, Physical Activity, and BMI for Age
Assessment Protocols in Arkansas Public Schools***

Ms. Tamara Baker requested changes to the rules and regulations documents used by Arkansas public schools. The first change was in Section 3.04. The outdated references to the Arkansas Consolidated School Improvement Plan (ACSIP) was removed. It is now just School Improvement Plan.

The second change was in Section 6.06.1. Two new modules were added concerning Family Engagement and Community Involvement. The two modules were separated. The reason for the separation was because the policy and activities for each one are very different.

The third change was in Section 7.07. This entire section was struck to resolve a conflict with former Section 7.11 (now section 7.10). There was a concern involving personnel licensed in physical education. There needed to be clarity that a physical education license was required in high school. In elementary school a physical education license is not required, however, an elementary school license is required. An appropriate license is required for both levels.

The last change was in Section 11.01. The section was amended to clarify that food and beverages may not be used as rewards or punishment.

Dr. Riddell asked to be provided the list for the Child Health Advisory Committee. Ms. Baker did not have the list readily available but assured Dr. Riddell she would get him the list as soon as possible.

Dr. Riddell made a motion to approve all changes of the ADE Rules presented to the Board. Seconded by Dr. Boss. Motion passed.

Amendments to Rules, Forms, or New Rules

1. Communicable Disease – Tuberculosis

Dr. Naveen Patil presented proposed amendments to rules pertaining to tuberculosis. He reported that the Centers for Disease Control and Prevention (CDC) updated its guidelines for screening and testing healthcare workers for tuberculosis (TB) in the United States. The last update for this specific group was in year 2005. This rule revision reflects the new CDC recommendation for healthcare workers. It also includes recommendation for changes to the rules for other groups such as employees in the prison system, daycare workers, and workers in homeless shelters.

The first revision was the addition of requirement of TB testing with an interferon-gamma release assay (IGRA) or a tuberculin skin test (TST) for persons without documented prior TB disease or latent TB infection (LTBI). Next was the addition of language removing the requirement of routine serial TB testing at any interval after baseline in the absence of a known exposure or ongoing transmission.

Lastly, added requirement to follow CDC guidelines on annual symptom screening for health care personnel with untreated LTBI and annual TB education of all health care personnel.

Dr. Boss asked if employees of hospitals, doctor offices, prisons, and other such places, no longer have to be re-tested for TB. Dr. Patel stated she was correct. He added that health care is a broad category. No matter where a healthcare worker works, they need only one baseline TB test. Once that test is done, and returns negative, it is no longer required. Every year after that, they just have to undergo a screening and TB education. In the past there were TB testing each year. That is no longer necessary.

Dr. Boss asked if any employee switched jobs and did not have a record of the TB test from the previous job, would that person be required to take another test. Dr. Patel responding by saying a person would have to undergo another test if no record exists of the previous test.

Dr. Riddell wanted to know approximately how much money the state could save if these changes were implemented. Dr. Patel stated the cost savings of the skin and blood tests would be about two and one-half million dollars per year. This savings does not include employees coming multiple times. These are extremely conservative figures. If you base this on commercial costs it will be millions of dollars in savings.

Dr. Gilmore made a motion to approve the amendments. Seconded by Dr. Smith. Motion passed.

2. Rules for Administration of Vital Records

Ms. Lynda Lehing presented revisions to the rules for Administration of Vital Records. The major revisions included the removal of the term “regulation” throughout the document as required by Act 315 of 2019; change in the death medical certification and registration process as required by Act 975 of 2019; the reporting of an abortion that results in a live birth as required by Act 801 of 2019; and the additional reporting requirements for abortions after 18 weeks’ gestation as required by Act 493. Dr. Zini pointed out that there is also a mechanism for a waiver, available for physicians or certifiers who issue five or less death certificates per month. Ms. Lehing agreed with Dr. Zini.

Dr. Riddell made a motion to approve; Seconded by Dr. Weinstein. Motion passed.

3. Vital Records ERAVE Electronic Registration Process Waiver Form

Ms. Shirley Louie presented a waiver form to the Board for approval. The waiver form allows medical certifiers exemption from compliance with the regulations in Act 975, which requires death records to be submitted electronically within three business days. If the medical certifiers issue five or less death certificates per month or show any other acceptable cause, they do not have to comply with Act 975. Also, the license number, telephone number, and email address of the physician were added to the form. In the approval section of the form, a place for the signature of the person who approves or disapproves the form, and the date were added.

Dr. Zini asked if funeral directors, nursing homes, or hospitals will still have the same death certificates as now in which to sign after the new waiver form is implemented. Ms. Louis stated the funeral homes usually starts the death record and should be doing so through ERAVE. Once the certifier receives the message from the funeral home, the certifier should be the one who does the submission electronically within three business days and notify the funeral home that it has

been done. Even if the funeral home has not started the record in ERAVE, the certifier can still do it.

Dr. Zini wanted to know who would provide the death certificate on paper if the certifier has a waiver. Ms. Louis stated that the certifier can still continue to issue death certificates by hand if he or she has a waiver. They will continue to be accepted from certifiers who possess waivers.

Dr. Nair pointed out that the number of physicians who would actually certify a death is smaller than the number of physicians who do not certify deaths. The latter population is much larger. So why not make the smaller population submit this form rather than make the larger population submit the form. Ms. Louie stated that if you are not a certifier, you are not required to submit the form. Only if you are entering into ERAVE. This is not for all physicians.

Dr. Hui made a motion to approve ERAVE. Seconded by Dr. Weinstein. Motion passed.

4. Prescription Drug Monitoring Program

Dr. Jamie Turpin presented proposed amendments to rules pertaining to the Arkansas Prescription Drug Monitoring Program. The proposed amendments were the removal of the word "regulation," to follow Act 315 of 2019; the update of the Prescription Drug Monitoring Program's new branch as the Department of Health's Substance Misuse and Injury Prevention Branch; the correction to the Table of Contents to include Section XIII; the insertion of language allowing access by the Arkansas Medicaid Prescription Drug Program as mandated by Act 46 of 2017; the insertion of language for mandatory usage of the Arkansas Prescription Drug Monitoring Program by prescribers, as mandated by Act 820 of 2017; addition of two new members to the Arkansas Prescription Drug Monitoring Advisory Committee, as mandated by Act 820 of 2017; insertion of language adding allowing access by the Arkansas Office of Medicaid Inspector General, as mandated by Act 141 of 2019; and insertion of language for development of prescribing criteria for controlled substances and reports to be generated to prescribers, dispensers, and licensing boards based upon this criteria, as mandated by Act 820 of 2017.

Dr. Turpin further presented proposed amendments to insert language for implementation of real-time reporting by the Arkansas Prescription Drug Monitoring Program if funding and technology are available, as mandated by Act 820 of 2017; to insert additional language regarding information provided for research, as mandated by Act 688 of 2017; to insert language regarding providing information to insurance carriers for the purpose of verifying prescriber or dispenser registration with the Arkansas Prescription Drug Monitoring Program, as mandated by Act 688 of 2017; to insert language allowing for the exchange of dates between the Arkansas Prescription Drug Monitoring Program with federal prescription drug monitoring programs, as mandated by Act 605 of 2019; and, lastly, to insert language regarding the penalty for failure to use the Prescription Drug Monitoring Program, as mandated by Act 820 of 2017.

Dr. Amerine made a motion to approve all amendments to the Prescription Drug Monitoring Program. Seconded by Dr. Boss. There was further discussion.

Dr. Zini asked if there was physician representation on the PDMP. Dr. Turpin confirmed that there was physician representation. She stated the Medical Society has a representative. Dr. Riddell commented that an OBGYN would be well-positioned to make contributions and Dr.

Smith agreed with Dr. Riddell. Dr. Smith pointed out that the composition of this committee is prescribed in statute and currently Dr. Boss has agreed to be the Board of Health Member on the committee. These are open meetings and Dr. Smith invited Dr. Riddell to attend and participate in the discussions.

Dr. Yamauchi asked if Arkansas's rules closely mimic those of neighboring states. Dr. Turpin informed Dr. Yamauchi she would have to do some research since each state's laws can be different. Dr. Yamauchi stated he was specifically asking about the drugs that are available and/or monitored through our state as opposed to our neighboring states. Dr. Smith responded by stating that the drugs that are monitored are much the same because they are scheduled drugs, but Arkansas does have very different statutes and rules. As an example, Missouri does not have a state PDMP, and Oklahoma has a PDMP, but it is housed within law enforcement.

Dr. Dunn asked a question of Dr. Turpin. He asked how are the new regulations and changes going to get out to the physicians so that the physicians can make the necessary adjustments. Ms. Shue responded, stating that Arkansas follows the Administrative Procedures Act and there will be a public comment period after the Governor's Office approves the proposal, as the public comment period is the next part of the rule promulgation process. Information will be sent out to all the stakeholders to make sure everyone is aware of these rules. The rules will also be on the Department website as a proposed rule, which can be found under the Rules tab. Dr. Smith added that this is just one step in the process. These rules do not go into effect until the legislature approves them. This is at least a few months away from this being final and afterwards, in this case, there will be a promulgation usually through the medical society.

Discussion ended. Motion passed.

5. Controlled Substances List

Dr. Shane David presented the proposed amendments to rules pertaining to the List of Controlled Substances for the State of Arkansas. He specifically pointed out item numbers four, five, and six, which were Acryl Fentanyl, 4-Fluoroisobutyryl Fentanyl, and Tetrahydrofuranlyl Fentanyl. These drugs were placed into Schedule I. Item number 15, which was 5F-Cumyl-Pinaca was placed under Schedule VI.

Dr. David pointed out Item number 10. Pursuant to Act 504 of 2019, the language was updated as carved out for Tetrahydrocannabinols (THC). THC is a Scheduled VI controlled substance unless the THC is (a) contained in hemp-derived cannabidiol; (b) not more than 0.3 percent that have been verified by a nationally accredited laboratory; and (c) not approved by the United States Food and Drug Administration for marketing as a medication.

The other listed items are currently scheduled items that were already listed but are updated due to language changes as notified by the DEA and Arkansas State Crime Laboratory, or marked for clean-up or for the movement of three substances in Schedule VI from one section in Schedule VI to an unclassified section.

Dr. Boss made a motion to approve the proposed amendments. Seconded by Mr. Crider. Motion passed.

A short recess was taken at approximately 11:50 p.m.

The meeting resumed at approximately 12:00 p.m.

6. Public Water System Rules

Mr. Jeff Stone stated that its been over five years since the rules have been updated pertaining to public water systems. There were changes in the law after the last legislative session that made it necessary to revise the rules.

First, all references to “rules and regulations” will be changed to just “rules.” Next, a correction was made to a reference of “Department of Health and Human Services.” The correct reference will be “Department of Health.”

Section VII.G (Approved Chemicals, Materials, Equipment, and Processes) was modified to mean that certifications intended for residential use and sized products can be referenced when the very small water systems need to select equipment of a similar small size.

Section XI.H (Cleaning and Disinfection) was updated to reference AWWA Standard C652-92 to refer to the most recent version of the standard which is C652-11. This AWWA standard governs the disinfection of the drinking water storage tank prior to placing such a tank into service.

Section XIV.E (Disinfection of Pipe) was modified to update the referenced AWWA Standard C651-92 to refer to the most recent version of the standard which is C651-14. Also, a proposal was made to strike the language concerning collection of bacteriological samples, “that are not collected on the same day.” The revision of this standard allows for two options. The changes would allow for use of either bacteriological sampling option. One of the options allows for collection of bacteriological samples on the same day.

Mr. Stone’s last proposal was to modify Section XXV (Annual Fees) to update the public water system service fee from \$0.30 per service connection per month to \$0.40 per service connection per month in accordance with the change made by Act 788 of the 2019 legislative session.

Mr. Crider made a motion to approve all changes. Seconded by Dr. Weinstein. Motion passed.

7. Abortion Facilities

Ms. Becky Bennett and Ms. Jane Gaskill requested authorization to proceed with the administrative rule making process regarding abortion facilities. Ms. Gaskill reported that following the 2015 legislative session, the Health Department drafted changes to the 2014 abortion rules and requested permission from the Board to go forward with those changes. After comments at the public hearing made revisions, those rules were brought back to the Board in 2016. The Board approved the new revisions to go forward and the new revisions were taken to public hearing and received enough public comments that even more revisions were made. Those revisions were brought forward to the Board in 2017 and received permission from the Board to go forward to public hearing. However, following the Board’s approval to go forward, there was an emergency rule adoption that occurred because of a specific requirement of time in one of the statutes. That emergency rule passed and was filed, but the bulk of the rules were put on hold because another legislative session was approaching. In sum, there was the 2015

legislative session, 2017 legislative session, and now the 2019 legislative session. The intent of the present rules draft is to amend and move forward, but there have been injunctions, with a ruling on one injunction in 2019. Because of the complicated procedural history, the chair of the Board recommended a committee.

Dr. Zini asked for volunteers to form a committee for review of abortion rules at a later time before the next Board meeting. The five members who volunteered were Mr. Donald Ragland, Dr. Marsha Boss, Dr. Susan Weinstein, Dr. Phillip Gilmore, and Dr. Mike Riddell.

[The committee will review the rules at a later time.]

8. Hospitals and Related Institutional/Critical Access Hospitals

Ms. Becky Bennett presented changes made to the proposed rules for hospitals and related institutions and critical access hospitals in Arkansas. The changes were 1) the added definition of abortion complication; 2) the update of TB prevention language; 3) the addition of abortion complication reporting requirement; 4) the addition of requiring reporting for transfers from lay midwives; and 5) the added option for compliance certification by licensed architect or professional engineer.

Dr. Boss asked if the abortion issues should wait and be addressed in the upcoming committee meeting. Dr. Boss pointed out that there is a place in the rules regarding abortion complications. This could be a complex area. For instance, how would the physician know when there is complication? Dr. Zini then asked if it would be possible for the committee to address these issues and delay the vote for this particular item until after the committee meets.

Ms. Gaskill pointed out, and Dr. Smith agreed, that these rules were just for the hospitals. There is not a need for the committee to review these rules.

Dr. Amerine wanted to know if the vote would be for final approval or to go through the administrative process. Ms. Bennett stated the vote would be for administrative process. Dr. Amerine needed clarification that if the committee goes ahead and meet, there will be time allowed for review of the different sections of the hospital regulations, and afterwards, there will be time to have public comment. Dr. Zini and several others agreed that he was correct.

Dr. Weinstein made a motion to approve changes to the proposed Rules. Second by Mr. Ragland. Motion passed.

9. Home Health Agencies

[Tabled for next Board meeting in October, 2019]

10. Hospice

Ms. Bennett presented changes to proposed rules for hospice in Arkansas. The changes were 1) the removal of the authority citation from Section 3 to Section 2; 2) adding the definition of “attending APN”; 3) the update of TB prevention language; and 4) inclusion of RNs and nutritionists in dietary counseling.

Dr. Braden made a motion to approve changes to the proposed rules. Seconded by Dr. Riddell. Motion passed.

11. Freestanding Birthing Centers

Ms. Bennett presented changes to the proposed rules for freestanding birthing centers in Arkansas. The changes were 1) the addition of reporting requirements for patients transferred to a hospital or other licensed healthcare facility and 2) the changing of TB screening requirements to the latest CDC Guidelines.

Dr. Smith added that Arkansas has no freestanding birthing centers and there are no plans to build any at this point. However, if there is ever a need for approval, it will be covered in statute and rule.

Mr. Ragland made motion to approve changes. Seconded by Dr. Erney. Motion passed.

12. Orthotists, Prosthetists, and Pedorthists

Ms. Bennett presented changed to proposed rules for Orthotic, prosthetic, and pedorthic providers in Arkansas. The changes were 1) the elimination of the word “regulations” throughout the document; 2) adding the definition of “returning military veteran”; 3) adding requirements for reciprocal licensure; 4) adding military licensing provisions; and 5) adding criminal history background provisions.

Dr. Weinstein made a motion to approve all changes; Seconded by Dr. Riddell. Motion passed.

13. Perfusionists

Ms. Bennett presented changes to the proposed rules for perfusionists in Arkansas. The changes were 1) The elimination of the word “regulations” throughout the document; 2) adding the definition of “returning military veteran”; 3) adding military licensing requirements; 4) inclusion of qualification for reciprocity for applicants from other states; and 5) clarification of criminal history to reflect statutory language.

Dr. Riddell made a motion to approve all changes. Seconded by Mr. Crider. Motion passed.

14. Milk Bank Standards

Ms. Cristy Sellers presented rules for approval pertaining to milk bank standards in Arkansas. Ms. Sellers stated that all the rules are new. Dr. Smith pointed out, and Ms. Sellers agreed, that Arkansas has no milk banks and no plans to form any. The only currently existing banks are the ones in the hospitals, which are different from other milk banks. The milk bank in hospitals are established for mothers providing milk for their own babies. The milk banks pointed out in the proposed rules refer to mothers providing milk for anyone.

Dr. Gilmore made a motion to approve the proposed rules pertaining to milk banks. Seconded by Dr. Hui. Motion passed.

15. Body Art Establishments

Dr. Richard McMullen presented proposed insertions to the rules pertaining to body art establishments. There were four changes: 1) The entire rule was updated to reflect requirements of Act 315 of 2019, deleting or changing the word “regulation” to “rule”; 2) Section 4.7 from A.C.A. 20-27-1507 was added due to Act 910 of 2019, Transformation and Efficiencies Act; 3) Section 5.3.4 was added to reflect changes due to Act 820 of 2019, pertaining to military and military spouses; and 4) Section 5.5 was added to reflect changes to Act 426 of 2019, pertaining to occupational licensing.

Dr. Smith asked if these rules were the same as the previous ones of Higher Education. Dr. McMullen stated that they are identical to those rules.

Dr. Thomas Jones made a motion to proceed to the administrative procedure process. Seconded by Dr. Weinstein. Motion passed.

16A-D. Proposed Rules for Occupational Licensure

Mr. Chuck Thompson presented rules for occupational licensure pertaining to four issues, which were onsite wastewater, septic tank cleaning, water operator licensing, and plumbers licensing. Changes to the rules for these uses are basically the same as all others presented. Act 820 was reverted regarding military licensure and Act 1011 regarding reciprocity as well as temporary provisional licensure. The Act provides model language for consistency across the board when relating to these issues. The language is taken verbatim from the statutes and ensures that there will be consistency when it comes to the rules that this Board and other commissions promulgate. There is also the change that the term “rules and regulations” now becomes just “rules” per the General Assembly this past session.

Motion made by Dr. Riddell to approve the rules regarding all four issues. Seconded by Mr. Crider. Motion passed.

16E. Midwifery

[Tabled for next Board meeting in October, 2019]

16. Clarity of Act 990 [emergency agenda item added]

Mr. Thompson reported that the Legal team is seeking clarity involving the legal interpretation of Act 990. He stated Act 990 does not authorize boards and commissions to do background checks. However, there was not confusion as to whether the law applies and issues involving prohibiting offenses. The question then becomes, if you can’t do background checks, and you do not have the authority to require background checks, then how would one know about prohibiting offenses? That discussion is ongoing with the Attorney General’s Office and the Department of Labor. Mr. Thompson presented proposed language, suggesting that in the meantime, while waiting for clarity, the language be adopted for Act 990 directly from the statute, prompting provisional approval from the Board. If done in this manner, the Board will not have to convene for approval if this language has to be inserted into the rules.

Mr. Thompson stated that this reference in the statute is the section regarding prohibiting offenses when it comes to criminal violations, as well as how a board or commission goes about

handling a waiver. There is no leeway when it comes to the waiver process. There are strict guidelines to be taken into consideration.

Dr. Amerine made a motion to accept the suggestion made by Mr. Thompson. Mr. Crider Seconded. Motion passed.

17. General Sanitation

Mr. Thompson presented proposed updates to rules pertaining to general sanitation. Mr. Thompson stated that the main concern was Act 708 of 2019. That act required the Department of Health to promulgate rules regarding improvement districts.

Section VII C, Connection to Public Sewer Required, was updated to current law.

Section XII, Sanitary Infrastructure with Municipal Jurisdictions, was added in reference to subdivisions located within municipal planning zones. Consensus wording was included. The wording redefines certain improvement districts, including debt and minimum water and sewer standards.

Section XIII, Penalty, was updated to current law.

The wording of “regulation(s)” was stricken or changed to “rule” throughout the document due to requirements of Act 315.

Mr. Crider made a motion to approve the proposed updates to the rules. Seconded by Dr. Jones. Motion passed.

OTHER BUSINESS

Administrative Updates

Ms. Connie Melton and Mr. Chuck Thompson presented an update on medical marijuana. Ms. Melton reminded the Board of a question that was raised at the last meeting. The question emphasized concern regarding the security of a physician’s DEA number. Ms. Melton reported that it was clarified that the statute requires that physicians be issued a DEA number, so the physician written certification form was revised, and now the physician can “attest” that they have a DEA number rather than write the DEA number on the form. That form has been published and is now on the Board’s website.

Ms. Melton reported that there are currently six dispensaries opened and under the authority of Alcohol Beverage Control (ABC). Three more are expected to open in the month of August. The cultivation facilities are also under the authority of ABC. Currently, the dispensaries are providing flour, baked cartridges, topicals, concentrates, and gummies as the typical edibles. The gummies has been dyed black to appear less attractive.

Ms. Melton stated that education has been provided to law enforcement, particularly ACIC, and they have subsequently created a very comprehensive tutorial and training in their ACIC online training portal.

Ms. Melton reported that there were 17,995 approved cards. The top five conditions are intractable pain, severe arthritis, PTSD, peripheral neuropathy, and fibromyalgia. Last year there were 489 physicians who signed physician certifications. So far this year, there are 676. Currently, 22 minors have been issued cards and are required to have a parent caregiver through the application process. No minor's card is received until the caregiver receives a card.

Dr. Zini asked what type illnesses qualified minors to receive a card. Ms. Melton did not have that information at hand, but assured Dr. Zini she would have that information soon. Dr. Zini then asked if a physician who is providing chronic pain management medication, legally offer medical marijuana as well. Ms. Melton stated that the statute does not address that issue. That would be a physician's decision.

Dr. Amerine asked if pregnant women could receive medical marijuana. Ms. Melton stated that pregnancy is not required to be considered for the application. However, the labeling standards have specific language that have to be on the label that relate to pregnancy.

Mr. Thompson reported on three Acts passed in the 2019 session regarding medical marijuana. Act 928 regulates advertising by cultivating dispensaries, especially advertising that could target children. For example, that can be no advertising within 1000 feet of a school, daycare, or public transportation, or in media where it is determined that 30 percent or more of the audience consists of children.

Act 989 prohibits edibles appealing to children. For example, no edibles can be made into animal shapes, vehicles, or characters. Also, they cannot be added to food that is commonly sold in convenience stores like a popular candy bar. Act 1004 was amended to include consideration of facilities for individuals with developmental disabilities when establishing dispensary cultivation sites. These facilities were inadvertently left out of the other amendments and are now added to the list with schools, churches, etc. However, because they were left out, any current dispensary or cultivation site that is in violation of the statute is grandfathered in.

PUBLIC HEALTH SCIENCE/PROGRAM UPDATES

Dr. Lindy Bolin gave an update on oral health in Arkansas. Dr. Bolin stated that access to oral health care is a big issue around the Country in all aspects. In Arkansas, there is a problem getting oral health service to a very underserved population. The majority of the dentists are found in eight counties, which follows the trend that wherever there is a large population that is where the dental practices are.

Dr. Bolin reported that Act 89 of 2011, Dental Hygiene Collative Care Act, allows a dental hygienist to have a permit and work in connection with a dentist. The hygienist is allowed to work outside of a building structure in a designated public setting. Presently, there is a list of eleven public settings. The list consists of correctional institutions, local health units, and schools, with schools being the most contentious. As a result, a law passed causing the Dental Practice Act to be amended which led to Article 19, that became the Dental Hygiene Collative Act.

The Board of Health has created a tier system of the public schools throughout Arkansas, which is based on the free and reduced meal plan. In a tier one, 90 percent of the students are enrolled, which consist of 88 schools. A tier two is 75 percent or more, which is 118 schools. The tiers go all the way down to a tier 6, which is less than 50 percent enrolled. The language further states that no school in the tier may be eligible for services until all schools in the higher tier has received services

Dr. Bolin presented to the Board a proposal to reconsider the tiers. The suggestion was to change the range limit from 6 tiers to 4 tiers. Then make tier 1 to include schools that are 75 percent or higher. That will increase the number of schools available for action to 346. A dental hygienist can provide service to students who otherwise would not have the opportunity to go to a dental office. Dr. Bolin stated that the proposal was just for informational purposes only. No action from the Board was needed.

PRESIDENT'S REPORT

Dr. Zini thanked everyone for coming to the meeting.

SECRETARY OF HEALTH'S REPORT

Dr. Smith reported that as of July 1, the Arkansas Department of Health is now expanded. There was 23 boards and commissions added, along with the Surgeon General, Dr. Greg Bledsoe. When the Department of Transformation Shared Services was formed, Ann Purvis was recruited as their Chief of Staff. She is still, however, with the Department of Health fifty percent of the time for at least the next six to twelve months.

Stephanie Williams, previously Deputy Director, is now Chief of Staff. Renee Mallory, who was previously the Center Director for Health Protection is now Deputy Director for Public Health Programs. Dr. Marisha DeCarlo, who was Director of Health Communications, is now the Center Director for Health Protection. Dr. Gary Wheeler, who has been the Chief Medical Officer, will be available only twenty percent of the time. Therefore, Dr. Dirk Haselow, will now also serve as the Chief Medical Officer. Dr. Bala will serve together with him. In that role, Dr. Bala will be designated as Deputy Chief Medical Officer as he continues to serve in his many other roles, including the Chronic Disease Director. There will be a meeting for the first time with the 23 boards and commissions on August 2nd. Matt Gilmore is taking the lead for ADH in overseeing all the boards and commissions.

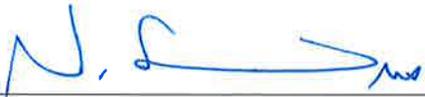
In the last 3 months, CDC Director, Robert Redfield visited the State twice. The first visit was the end of June, hosted by the Department of Health, UAMS, and the Governor. During this visit he did Public Health Grand Rounds which had a HIV stakeholders' round table. He also gave a talk at UAMS as well, speaking a lot about efforts to eliminate HIV in the United States. Arkansas is one of seven states selected as a pilot site for that issue.

Dr. Smith stated that Mr. Redfield returned earlier this week to the northwest part of the State at the invitation of Congressman Womack, where he visited one of the local health units in Washington County as well as the Northwest Campus for Children's Hospital. Dr. Gary Wheeler represented the senior leadership there for that visit.

Dr. Smith shared that in his role as President for the Association of State and Territorial Health Officials, he had the chance to be part of a round table discussion on health for rural and underserved populations, hosted by the House Ways and Means Committee in Washington, D.C. last week. He had the opportunity to contribute experiences and thoughts from Arkansas.

Motion made to adjourn; Seconded. Meeting adjourned.

The meeting was adjourned at approximately 1:20 p.m.



Nathaniel Smith, M.D., MPH
Secretary of Health
August 1, 2019

