

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

January 26, 2017

MEMBERS PRESENT

Jim Lambert, President
Terry Yamauchi, M.D., President-Elect
Nathaniel Smith, M.D., MPH, Secretary
Perry Amerine, O.D.
Gary Bass, Pharm.D.
Greg Bledsoe, M.D.
Lawrence Braden, M.D.
Glen "Eddie" Bryant, M.D.
Miranda Childs-Bebee, D.D.S. (via phone)
Clark Fincher, M.D.
Alan Fortenberry, P.E.
Beverly Foster, D.C.
Anthony Hui, M.D.
Lee Johnson, M.D.
Thomas Jones, R.S.
Robbie Thomas Knight, Ph.D.
Catherine Tapp, MPH
P. J. Walker, MSN, CADC
Susan Weinstein, DVM
Anika Whitfield, D.P.M. (via phone)
James Zini, D.O.

MEMBERS ABSENT (Excused)

George A. Harper, J.D.
Susan Jones, M.D.

GUESTS PRESENT

Joseph Bates, M.D, Deputy State Health Officer
Ann Purvis, Deputy Director Administration
Stephanie Williams, Deputy Director for Public
Health Programs
Namvar Zohoori, MD, Deputy Chief Science
Officer
Robert Brech, General Counsel
Reginald A. Rogers, Deputy General Counsel
Dirk Haselow, M.D., Ph.D., State Epidemiologist
Greg Brown, Branch Chief, Preparedness/Trauma
Mike Wilson, EOC, Technical Manager
James Bledsoe, M.D., Chief Physician Specialist
James Myatt, PD, Pharmacy Services Branch
Chief
Denise Robertson, ADH Registered Pharmacist
Dr. William Mason, Branch Chief, CHP
Arron Paduaevans, EMS Section Chief
Bernard Bevill, Section Chief, Radiation Control
Angela Minden, ADH Health Physicist
Renee Mallory, Center Dir. for Health Protection
Connie Melton, Branch Chief, Health Systems
Licensing & Regulation
Shirley Louie, Dir., Center for Public Health Prot.
Warren Bankson, Sr. Project Leader IT
Haley Ortiz, ADH Health Policy Director
Marisha DiCarlo, Ph.D., Director Health
Communications
Meg Mirivel, Public Information Specialist
Katie White, Public Information Specialist
Brad Crawford, Respondent
Erica Gee, Consumer
Elicia Dover, Channel 11 News
Benji Hardy, Arkansas Times
Andy Davis, Arkansas Democrat-Gazette
Nancy Cox, Legal
Bethany McLaughlin, Legal

MEETING OF THE ARKANSAS STATE BOARD OF HEALTH

The quarterly meeting of the Arkansas State Board of Health was held Thursday, January 26, 2017, in the Charles Hughes Board Room of the Freeway Medical Building in Little Rock, Arkansas. The meeting was called to order at approximately 10:05 a.m. with Dr. Miranda Childs-BeBee and Dr. Anika Whitfield participating by teleconference.

APPROVAL OF MINUTES

President Lambert entertained a motion for approval of the October 20, 2016, Quarterly Meeting minutes, and the Special Meeting minutes of the Arkansas Cancer Registry held on November 9, 2016. Ms. Catherine Tapp made a motion to accept the minutes. Dr. Zini seconded the motion. The motion passed and the minutes were approved as presented.

Nominating Committee Report

Dr. Hui reported that the nominating Committee met this morning and Ms. Catherine Tapp was nominated as the new President-Elect. Dr. Hui made a motion recommending Catherine Tapp be appointed. Dr. Zini seconded the motion, and the motion carried.

President Lambert asked that Board members volunteer to attend the administrative hearings. In the past there have been problems getting the Board members to attend. He advised volunteers to let Reggie Rogers know you are interested and you will be put on a list. Your name can be rotated so it won't be too burdensome on new individuals. Dr. Zini asked if the hearings can be done by phone and Mr. Rogers advised that they could.

OLD BUSINESS

Final Approval of Rules and Regulations Pertaining to the List of Controlled Substances

Mr. James Myatt, PD, Branch Chief, Pharmacy Services, came before the Board asking for final approval of the rules and regulations pertaining to the list of controlled substances. Mr. Gary Bass made a motion to approve the rules and regulations. Dr. Anika Whitfield seconded the motion and the motion carried.

Final Approval of Findings of Fact, Conclusions of Law, And Order – ADH v. Brad Crawford

Mr. Reginald Rogers, Deputy General Counsel, stated that a hearing was conducted on December 8, 2016, with Subcommittee Members Dr. Lee Johnson and Dr. Perry Amerine, hearing this matter. Mr. Brad Crawford saw a patient who was being transported to a drug rehabilitation facility and obtained her phone number. During his work as a licensed paramedic he provided services for the patient and later contacted her and initiated a relationship and allegedly made drugs available to her. The subcommittee recommended that Mr. Crawford's license be revoked.

Mr. Rogers gave Mr. Crawford an opportunity to argue his case. Mr. Crawford reported that this type thing had never happened before and would never happen again. He admitted to something he did not do because the patient's mother had called ten times in twenty minutes and told him if he would tell her that he did this she would never call again. Instead of her dropping everything like she said she would, it just got out of hand. Mr. Crawford stated that he did not and has not ever given anyone medication outside of being employed and on duty. He understands he should not have gotten involved with a patient. He asked the Board, instead of revocation, if they would give him another chance. He stated that the only thing he actually did was get involved with the patient when she called and said she had taken 30 Ativan, so he called 911 to get her help.

Dr. James Bledsoe stated that he testified at the hearing and that Mr. Crawford admitted on video that he did give medication to this patient.

Dr. Lee Johnson stated that he was Chair of the subcommittee hearing and that in the initial statement of facts presented at the hearing, there were six issues that the subcommittee was asked to address, and of the six, four were substantiated, and we felt like the findings of those four were fairly clear. We felt they merited the recommendations you have before you. One of the findings that we did not agree with was diverting drugs, or supplies of patients, patients' families or healthcare providers. We discussed the issues Mr. Crawford raised and there was a lot of circumstantial evidence to support the idea that he may have diverted drugs to a patient inappropriately. In actuality, that was not something we found to be without some reasonable doubt. We felt the findings that were there were clear with regard to the other issues and serious enough to merit the recommendations that we've laid out.

Dr. Amerine stated that he also served on the hearing subcommittee and agrees with Dr. Johnson. Dr. Amerine asked Mr. Paduaevans, EMS Section Chief, if his assessment of his fellow peer, his professionalism and unprofessional conduct, and his evaluation of Mr. Crawford's performance, was important. In addition to the fact that he verbally admitted medicating the patient without direction from a physician, what other concerns did you have with his level of care?

Mr. Paduaevans stated that Dr. Amerine was absolutely right. As a peer, the professionalism was definitely not in the best interest of the patient. Mr. Crawford had some questionable interactions with the patient. As a healthcare provider, you know that you do not have an inappropriate relationship with a patient outside professional care. As a healthcare professional, this is apprehensible in my opinion.

Mr. Rogers stated that both sides have argued the case and the members have before them the Proposed Findings of Fact and Conclusions of Law.

Ms. Tapp asked if alternative consequences were discussed. Dr. Johnson stated that having sat through and heard the uncontested parts of Mr. Crawford's testimony, was that the recommendations made were appropriate.

Dr. Zini added that our options are to endorse the findings of the subcommittee. But what other options do the members of the Board have or that Mr. Crawford has other than remedy in court to possibly demonstrate his ability to come back and be licensed?

Mr. Rogers advised that he has the ability to appeal to the circuit court, but the revocation is permanent, to my knowledge.

Dr. Nathaniel Smith made a motion to accept the recommendations of the subcommittee. Dr. Zini seconded the motion and the motion carried with two opposed.

NEW BUSINESS

Approval of Proposed Rules and Regulations for Emergency Medical Services in Arkansas

Dr. Johnson stated that he had reviewed the rules and regulations. Mr. Greg Brown stated that he is requesting approval to start the administrative process for rule changes. Last year we came before the Board discussing the tiered response process which allows a service, if they have a nationally certified dispatch center, to follow a card system. For those that require an immediate life-threatening response and certainly the highest level of care, we will still be responding.

In Section IX we talk about permitting ambulances to carry a different crew configuration for non-emergency transports for patients that we do on a routine basis. For example, over the last few years there has been a tremendous increase in the number of patients going to dialysis, from home to dialysis, or from a facility to dialysis and currently the rule requires a paramedic to be in that ambulance. That ties up the resources that could otherwise be responding to emergent concerns and it gives the service the ability to configure that type of patient transport with an EMT and a non-licensed driver, or an Emergency Vehicle Operator. They will still have to undergo emergency vehicle operations; they will have to know how to drive the ambulance; there will be a 40 hour course; and a recertification period. They will not be licensed by the Department that will require any kind of patient care. If there is a necessity to provide care, they do have basic first-aid skills.

Dr. Johnson made a motion to move forward with the administrative process. Dr. Bryant seconded the motion and the motion carried.

Approval of Proposed Rules and Regulations for Control of Sources of Ionizing Radiation

Mr. Bernard Bevill, Section Chief, Radiation Control, came before the Board requesting approval to go forward with revisions to the Rules and Regulations for Control of Sources of Ionizing Radiation. The Radiation Control Section is responsible for regulating radioactive materials and x-ray equipment all through the State of Arkansas. The State of Arkansas is an Agreement State with the U.S. Nuclear Regulatory Commission. Today we are bringing forth a small set of regulations that address four different areas. Mr. Bevill also reported that there were some clean-up and housekeeping changes in the regulations. Basically these regulations are minor changes to reporting requirements. Also, we are adopting some of the international Atomic Energy Agency's 2009 regulations dealing with transportation of radioactive material;

and some minor changes regarding security issues. Dr. Hui made a motion to move forward with the proposed revisions. Dr. Zini seconded the motion and the motion carried.

**Approval of Proposed Rules and Regulations Governing
Medical Marijuana Registration, Testing, and Labeling
In Arkansas**

Mr. Robert Brech, General Counsel, stated that the Board's vote today would be to begin the administrative process. What was done, in a nutshell, the sections were taken out of the Amendment itself that dealt with the registration for the patients and for the designated caregivers. We added things to make sure the licensing process would work. The Board also has the responsibility for the labeling and testing standards. We looked at other states to see what they were doing. What are in the rules before you today are mainly from the State of Oregon. As far as the laboratory testing and labeling, there is one mistake that an individual found from the version sent to you on Monday, I think it is correct on the version you have today. On the last page under "Metals," the proper unit should have been micrograms per kilograms. This draft version requires when an applicant asks for a registration card that they submit with that application a copy of their Arkansas driver's license or ID card.

One thing people have asked, "Does this violate federal law?" and it likely does. Marijuana is a Schedule I substance under federal law which means it has no redeeming medical qualities. The Justice Department put out a memo in 2013 to U.S. attorneys basically that their resources could be used in different areas and, if states abided by certain things, they would likely allow this activity to continue in those states. The memo talked about making sure that marijuana is not diverted to states that have not accepted medical marijuana. It is our contention that it should be limited to Arkansas citizens.

Another issue that was brought up was the activation time. There is a definition for activation time for the oils or extracts or perhaps, in the future, edibles, if those become available, and that will be up to the Alcohol Beverage Control Division. Should that happen, we wanted a definition for activation time or at least a likelihood of when a person might start to feel the effects.

A comment was made this morning dealing with criminal background checks. The Amendment says that a designated caregiver has to pass a federal/state criminal background check. What is in the Amendment today is not sufficient to get that criminal background check from the federal government, the FBI will not do that unless it is specifically in the statute, and there are discussions about correcting that. It will have to be done by statute or by legislative action to amend this to allow for the federal criminal background checks.

Dr. Fincher asked Mr. Brech what his or his patient's recourse would be if he had a professional relationship with a patient who wanted him to certify that they had certain things, and he didn't believe in medical marijuana and he didn't want to do it. Mr. Brech stated that no doctor would be required to certify someone; it is going to be up to the individual doctors whether or not they want or feel like this is of benefit to their patients.

Dr. Johnson stated he had some concern about the language concerning the designated caregiver. It says that a signed statement by the designated caregiver has to be provided that he or she will not divert marijuana to anyone who is not allowed to possess it under the Amendment. That would imply that they could divert it to other people besides who they are designated to care for, and I have some concern about that language. Mr. Brech stated that they would have to have the registration card. The Amendment allows for that type of transfer between patients or between caregivers and patients and also allows for the transfer of marijuana between dispensaries and/or cultivation centers. Dr. Johnson asked if all the requirements placed upon the dispensaries for labeling, and testing, when it comes to one registered person passing marijuana to another card-carrying registered person, none of those labeling requirements are enforceable or required? Mr. Brech advised Dr. Johnson that he was correct.

Dr. Anika Whitfield asked if the Board could make it clear that the regulations are not limited to people of privilege. Mr. Brech stated that there is a person on the Medical Marijuana Commission that is championing what Dr. Whitfield is putting forth, but there is concern that people with inadequate resources, if they are granted a license to cultivate and are not able to keep their operation running long enough to harvest something, that that is also not something they want to see. The Medical Marijuana Commission has set some pretty high standards for people who want to be cultivators. But they have been discussing that for quite some time.

Dr. Amerine asked if the Amendment presented itself in such a way that it was written to convince the people of Arkansas that their wealth, health and welfare would be protected but in fact, there are a couple of examples that were pointed out today that are incongruent with the impression that the Amendment made. Is there any legal recourse or review if it is deceptive in the way it was presented to the people of Arkansas? Mr. Brech stated that all ballot titles have to be approved by the Attorney General's Office and the Supreme Court of Arkansas approved this ballot title as well. I don't know if there would be any recourse at this point. Dr. Amerine stated his question was not of the ballot title but the specific provisions within the Amendment. Is it true that you are saying that if something was not working well that the legislature by three-quarters of a vote may be able to correct those particular sections? Mr. Brech said that is what the legislature is doing now, they are looking at sections. They can do it by two-thirds vote in both houses.

Dr. Amerine asked Mr. Brech if he would carry the concerns of the Board members to the legislators about the possible transfer of marijuana in the way it is written at this time and correct that. Mr. Brech reported that there are a number of changes being discussed, but what happens with those is up to the legislature. Dr. Amerine stated that it is acceptable to him that a caregiver can work with an individual patient that needs the marijuana but there is a provision there where it could be diverted. I would just ask that you bring this up to the legislators. Mr. Brech stated that he would be happy to bring that concern up.

Dr. Smith added that this is a somewhat unusual situation where we have a product that is intended for human ingestion that has no federal oversight or standards. The burden of ensuring the health of the public and the health of those who use falls solely on state agencies, particularly the Department of Health. We have tried to, within the limits allowed by this Amendment, borrow best practices from states that have done this and try and foresee any potential dangers to

the health of the users or the public, and tried to put in place robust rules and regulations around those. We don't have national standards or federal guidelines to help us. We have brought in expertise from a number of groups and individuals. I would like to give thanks to you here. You have gotten down in the weeds on this and you are asking a lot of the questions that I have asked.

For this to actually work, it has got to interdigitate very closely with the rules and regulations from the ABC, from the Department of Finance and Administration, and from the Marijuana Commission, and we have been working closely with them. We may have new legislation that would prompt us to make changes. But our intent has been to try and do everything we can to protect the health of the public, and I appreciate your contribution to that in looking at these. This will not be the final version that you have to look at.

Mr. Brech thanked Dr. Hui for reviewing the rules as the expert for the Board.

Dr. Johnson asked for clarification on page 10. "(B)" is about "Usable Marijuana Labeling," and "(C)" is about "Cannabinoid Concentrates and Extracts" labeling, correct? Mr. Brech said that was correct. Under "(I)" subtitle (i) "This product is not approved by the FDA to treat, cure, or prevent any disease." That is labeling we are allowed to put on the cannabinoid extracts, correct? Mr. Brech stated that we were given the charge of doing the labeling. Dr. Johnson asked if we could also put that on the usable marijuana, because it is not included on the usable marijuana labeling. Mr. Brech stated that he would look at that and if it is the Board's wishes that it be put in there, I will make sure that it is.

Dr. Smith added that that was a good point. The reason it was important to put it under concentrates and extracts is because the packaging for those may bear a resemblance to medications where usable marijuana or an edible would look like a medicine. We should have the consistency there.

Dr. Bryant made a motion to amend if possible. Dr. Johnson made a motion that we move forward with the public hearing process with that one amendment to the rules and regulations.

President Lambert stated that we have a motion on the table; Dr. Bryant seconded. Mr. Brech advised that we have two motions on the floor. President Lambert stated we have a motion to move forward with the administrative process with the change proposed by Dr. Johnson. Dr. Amerine seconded and the motion carried with one abstaining.

President Lambert stated we needed a motion to move forward with the proposed rules and regulations. Dr. Johnson made a motion to move forward with the proposed rules. Dr. Bryant seconded and the motion carried.

Dr. Amerine asked President Lambert and Dr. Zini if a resolution was in order for the Board to resolve that the State Board of Health recommend that the current Amendment be changed by a two-thirds majority to prevent misdirection of the medical marijuana product. If we could go on record saying that is something we are all very concerned about, and we would like to let them know maybe help Mr. Brech make that point to the Legislature. Dr. Zini stated that it would be a

good thing to go on record regarding that. It is just a recommendation to our counsel to take that to the Legislature because it involves the original Amendment, and I would vote for that.

President Lambert stated we have a motion to authorize Mr. Brech to go to the Legislature and encourage them to consider the issue about diverting medical marijuana by the caregivers, is that correct? Mr. Brech asked if the patient should be included in that as well and Dr. Zini said "yes."

Dr. Smith added that the intent is that only the patient would be able to use the marijuana that was purchased for that patient. So transferring a patient's marijuana to another patient or to another designated caregiver, you would want that also included in the prohibition about diversion. Drs. Amerine and Zini agreed. Mr. Brech stated he would take this to the Legislature also.

A motion was made and seconded that Mr. Brech take this issue to the Legislature. The motion carried. Mr. Fortenberry said he had no problem with the motion that Mr. Brech take this before the Legislative body and the Governor's office, but would do more good if he would put it in writing and furnish it to all the Board members and you take it to your legislator. Dr. Zini agreed. Mr. Fortenberry stated that your individual power with your legislator is far more powerful than Mr. Brech saying it.

President Lambert asked that Mr. Brech get something out to all the members. Mr. Brech stated that he would and everyone could email him.

Approval of NAACCR Active Consent Request for Release of Data

Dr. Namvar Zohoori, Deputy Chief Science Officer, came before the Board requesting approval to release data from the Central Cancer Registry to CiNA for either research or development of reports and facts and figures. The Science Advisory Committee met and reviewed the requests, and approved them. Ms. Catherine Tapp made a motion to approve the release of data. Dr. Zini seconded the motion and the motion carried.

Proposed Findings of Fact, Conclusions of Law and Order- Arkansas Department of Health v. Lowell Coomer

Mr. Reginald Rogers, Deputy General Counsel, stated that Respondent, Mr. Lowell Coomer has not paid his required licensing fees and has been notified seven times that if payment was not received his license would be terminated. Mr. Coomer was duly notified of this Board of Health meeting. Mr. Coomer did not appear at the Board of Health meeting on January 26, 2017. A hearing was held on July 14, 2016, but Mr. Coomer did not appear. The recommendation of the subcommittee was that Mr. Coomer pay the overdue license fees of \$2,262.00, that his license be revoked, and that he advise where the radioactive device can be located. Mr. Beville stated that we need to know what happened to this device; hopefully he will take measures to lawfully dispose of it. But he stopped communicating with the Radiation Control staff. Dr. Fincher made a motion to approve the Proposed Findings. Dr. Bryant seconded the motion and the motion carried. The Board's Order will be mailed to Mr. Coomer.

Consideration of Request to Change the Date of July 27, 2017
Board of Health Meeting

Dr. Smith asked the members of the Board to consider changing the July 27th, 2017, quarterly meeting. President Lambert presented the date of August 3, 2017, for the Board's consideration. Mr. Fortenberry made a motion to move the Board meeting to August 3, 2017. Dr. Foster seconded the motion and the motion carried.

Approval of Location of October 2017 Educational Meeting

Ms. Stephanie Williams, Deputy Director, Public Health Programs, presented Little Rock as the location of the Board of Health's October meeting and educational workshop this year, in hopes of increasing attendance. Dr. Smith added that the Department of Health is happy to have the session anywhere the Board would want. Over the past several years, our biggest expense has been housing the Department's staff, so it would be more fiscally responsible to have it in Little Rock. After discussion of different locations, President Lambert suggested we look for an appropriate venue in Little Rock for the October 26th, 2017, meeting.

Dr. Johnson asked if the meeting would be better attended if it were on a Saturday/Sunday, or a Friday/Saturday? Dr. Smith suggested trying the one change to see if attendance was better and then if we still have room for improvement, make the second change. That would help us to know which change made a difference. Dr. Fincher made a motion to have the meeting in Little Rock in October. Mr. Fortenberry seconded the motion and the motion carried.

Other Business

Ms. Stephanie Williams, Deputy Director, Public Health Programs, presented a letter from the Arkansas Sheriffs' Association advising that Sheriff Ray Vance was stepping down from his position as a board member of the Prescription Monitoring Program. Ms. Williams asked that the Board consider approval of the request to appoint Sheriff Jason Watson of Clark County to replace Sheriff Vance. Dr. Zini made a motion to approve. Ms. Whitfield seconded and the motion carried.

Approval of Resolution for Stipend and Travel Reimbursement

Ms. Peggy Walker read a resolution for approval of stipends and travel for the Board of Health members. Ms. Walker made a motion to approve. Dr. Hui seconded the motion and the motion carried.

President's Report

President Lambert thanked all the Board members for their efforts and diligence in looking at these issues and giving input. That's what we are here to do, provide insight, and look at the documents. Obviously today you paid attention and looked at the document related to medical marijuana, and that's what we should do. We need to ask questions, we need to clarify and make

sure we understand it as well as we can. He stated that he appreciated the work that the Board does every day and taking time out of busy schedules to be here.

Director's Report

Dr. Smith thanked President Lambert for his service this year. It has been a challenging year in some ways. One of the big assets to the Department is you as a Board, and I want to thank each of you for your involvement, for your commitment to the work that you do. I know some of it is more interesting than others and some of it is more challenging than others.

I also want to give some clarifying remarks about service on the Board. A number of members have had their term of service come to an end, and there have been some things that we have danced around a little bit; one is the new requirement for an online application. I didn't want anyone to take that as "you are not welcome", but if your term of service comes up and you still have a desire to serve, I want to encourage you to fill out the online application. It's up to the Governor's Office to decide whether you continue to serve but if you do not fill out the application, then the answer is going to be "No." I really value the contribution of each of you. The Governor's Office has a big job and they have been behind on a lot of the appointments. If your term of service comes to an end and you haven't heard from them that means you continue to serve until you hear from them.

I let them know that we have some challenging months ahead with our medical marijuana rules and regulations. We are probably going to have emergency sessions where we've got to review new versions of these rules and regulations, and it is very important that we have at least a critical mass of folks who are familiar with the process, and that we are not trying to onboard a bunch of folks in the middle of the rapids, so-to-speak. Some of that slowness has been at my request, so if your term of service has expired and you haven't heard from anyone, that is partly my fault. If you have any questions or concerns, feel free to reach out to me or one of our staff, and we will get you the information that you need.

There was no further business to come before the Board and the meeting was adjourned at the hour of 11:45 a.m. on Thursday, January 26, 2017.

Respectfully submitted,



Nathaniel Smith, M.D., MPH
Director and State Health Officer

April 27, 2017