

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

January 28, 2016

MEMBERS PRESENT

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

Member(s) Absent: (excused)

Clark Fincher, M.D.

GUESTS PRESENT

Joseph Bates, M.D., Deputy State Health Officer
Stephanie Williams, Deputy Director for Public Health Programs
Ann Purvis, Deputy Director for Administration
Rick D. Hogan, General Counsel
Reginald A. Rogers, Deputy General Counsel
Elizabeth Harris, Deputy General Counsel
Leslie Lovett, Board of Health Liaison
Mike Wilson, EOC, Technical Manager
Kelli Kersey, Section Chief, Cosmetology and Massage Therapy
Xaiver Heard, Director, Human Resources
Renee Mallory, Director, Center for Health Protection
Connie Melton, Branch Chief, Health Systems Licensing & Regulation
Robert Brech, Chief Financial Officer
Robin Michaels, Environmental Health
Shirley Louie, Director, Center for Public Health Practice
Michelle Smith, Ph.D., Director, Office of Minority Health
James Myatt, Branch Chief, Pharmacy Services/ Drug Control Branch
Lynda Lehing, Branch Chief, Health Statistics
Laura Bailey, Director, Alcohol Testing Program
Rene Meints, Center for Local Public Health
Katie Wirges, Center for Local Public Health
Patti Scott, Director, Center for Health Advancement
Sharon Ashcraft, Women's Health
David Grimes, M.D., Medical Director, Family Health
Weldon Johnson, Delta Dental of Arkansas
Jack Abrahamson, Secure Arkansas
Andy Davis, Arkansas Democrat- Gazette

MEETING OF THE STATE BOARD OF HEALTH

The meeting of the Arkansas State Board of Health was held on Thursday, January 28, 2016, in the Charles Hughes Board Room at the Freeway Medical Building in Little Rock, Arkansas. Members participating by conference call were asked to give their names. Patricia Bell, O.D., Susan Jones, M.D., Robbie Thomas Knight, Ph.D., and Anika Whitfield, D.P.M. responded. It was reported that there was a quorum and the meeting was called to order at approximately 10:00 a.m.

Dr. Braden stated what a privilege it had been to serve as the President for the last year. He then handed the gavel over to the new President of the Board of Health, Jim Lambert.

Dr. Smith thanked Dr. Braden for his service as President of the Board. He also welcomed the two new members of the Board, Dr. Lee Johnson and Dr. Susan Weinstein.

APPROVAL OF MINUTES

President Lambert entertained a motion for approval of the October 23, 2015, Quarterly Meeting minutes. Dr. Zini made a motion to approve the minutes and Peggy Walker, MSN, CADC seconded the motion. The motion passed and the minutes were approved as presented.

NOMINATING COMMITTEE REPORT

Eddie Bryant, M.D. stated that a telephone conference was held to consider the nomination of a President-Elect to the Board. The Committee unanimously recommended Dr. Terry Yamauchi. A motion was made by Mr. Harper. The motion was seconded. The motion passed unanimously.

Resolution Honoring Dr. James Rankin

The following resolution was read into the record by Dr. Nathaniel Smith:

ARKANSAS STATE BOARD OF HEALTH RESOLUTION Honoring James D. Rankin, Jr., MD, *Ashley County Health Officer*

BE It RESOLVED, The Arkansas State Board of Health wishes to honor Dr. James D. Rankin, Jr. for his unwavering support and dedication to public health in Arkansas while serving for more than 46 years as the Ashley County Health Officer.

Whereas, Dr. Rankin was born in Elaine, Alabama, on July 22, 1935. He subsequently graduated from Hendrix College in 1957. Dr. Rankin finished his residency at University Hospital in 1963. As soon as he finished his residency program, he began his service in the United States Air Force in 1963.

Whereas, at the age of fourteen, while baling hay for a local farmer, Dr. Rankin observed the new doctor in his hometown driving a brand new Cadillac with the windows rolled up and air

conditioning in the car. When he arrived home from the hot and dusty field he told his mother, "I'm going to be a doctor!"

Whereas, Dr. Rankin was the consummate County Health Officer, respected by his community. He has a heart for children and the underserved. Dr. Rankin has said "I have never worked a day in my life. This is my hobby."

Whereas, Dr. Rankin first arrived at the Hamburg Health Clinic in Hamburg, Arkansas, in 1965. He was immediately recognized as a community health leader. Dr. Rankin has served his community of Hamburg and Ashley County for more than fifty-one years.

THEREFORE, on this 28th day of January, 2016, the Arkansas State Board of Health rises unanimously to recognize and honor the long and distinguished career of Dr. James D. Rankin, Jr. and thank him for his forty-six years of service to the Arkansas State Board of Health and the State of Arkansas' most vulnerable citizens.

A motion to approve the Resolution was made and seconded. The motion passed.

OLD BUSINESS

**Final Rules and Regulations
Pertaining to the Arkansas Prescription Drug Monitoring Program**

Jim Myatt, Branch Chief, Pharmacy Services/Drug Control Branch, stated that the Rules and Regulations Pertaining to the Arkansas PDMP have been through the legislative process and have been approved. He asked the Board to approve the final Rules and Regulations for filing.

Dr. Bass made a motion to approve the Rules and Regulations Pertaining to the Arkansas Prescription Drug Monitoring Program. Dr. Zini seconded the motion and it passed, as proposed.

**Final Rules and Regulations for Orthotic,
Prosthetic and Pedorthic Providers in Arkansas**

Connie Melton, Branch Chief, Health Systems Licensing and Regulations, requested final approval to the Rules and Regulations for Orthotic, Prosthetic, and Pedorthic Providers in Arkansas. She stated that the administrative rules process had been completed, and the Rules had received approval from the legislative committees.

A motion to approve the Rules and Regulations as presented was made by Mr. Harper. The motion was seconded by Dr. Hui and the motion carried.

**Final Rules and Regulations for
the Administration of Vital Records**

Lynda Lehing, Branch Chief, Health Statistics, reported that all the steps in the administrative rulemaking process had been completed for the Rules and Regulations for the Administration of Vital Record. She asked the Board for approval of the final Rules and Regulations.

Dr. Weinstein made a motion to approve. Dr. Hui seconded the motion and it passed as proposed.

**Final Rules and Regulations
for Cosmetology in Arkansas**

Kelli Kersey, Section Chief, Cosmetology and Massage Therapy, requested that the Board approve the Rules and Regulations for Cosmetology in Arkansas for final filing. She stated that the Rules have been through the legislative process and have been approved by the Governor's Office.

Dr. Weinstein made a motion to approve the rules. Dr. Zini seconded the motion and it carried as presented.

**Final Rules and Regulations
Pertaining to Body Art Establishments**

Rene Meints, Center for Local Public Health, asked for approval of the Rules and Regulations Pertaining to Body Art Establishments. She stated that all the steps in the administrative rulemaking process had been completed.

A motion to approve the final rules was made by Peggy Walker and seconded by Tom Jones. The motion passed as presented.

**Proposed Rules and Regulations Pertaining to
Public Access to Auto-Injectable Epinephrine**

Jim Myatt, Branch Chief, Pharmacy Services/Drug Control Branch, presented the Proposed Rules and Regulations Pertaining to Public Access to Auto-Injectable Epinephrine. He asked the Board to approve the Rules as presented so that the Department could move forward with another public comment period.

A motion for approval was made by Mr. Harper and seconded by Dr. Beebe. The motion carried as presented.

**Proposed Rules and Regulations
for Abortion Facilities in Arkansas**

Connie Melton, MBA, FACHE, Branch Chief, Licensing and Regulations, came before the Board to ask for permission to proceed with the administrative rules process for the Rules and Regulations for Abortion Facilities in Arkansas.

Ms. Melton stated that the proposed amendments were made pursuant to six acts that were passed by the State Legislature in 2015. During the previous year, the Health Facilities Section had a public comment period for the first draft of revisions. During that public comment period, several valuable comments were received. After carefully considering those comments, the Section decided to refine and clarify the language of the first draft. It is that second draft of revisions, with the recommended changes, that was presented to the Subcommittee for recommendation to the Full Board.

Ms. Melton explained that the specific changes made based on public comments received were as follows:

1. Ensuring that the provisions that apply only to medical abortions (follow up appointment, contract with physician with admitting privileges, physician present for initial administration of medication) by Statute do not apply to surgical abortion in the Rules.
2. Allowing a “custodian” to sign a consent for a minor or incompetent individual, as required by Statute. Also, clarifying that both the minor receiving the abortion and her parent, guardian, or custodian must sign a consent before the abortion is performed.
3. Adding the word “conspicuous” to describe the required signage in abortion facilities, as required by Statute.

A Subcommittee consisting of Dr. Yamauchi, Ms. Ringgold, Dr. Fincher and Dr. Thomas-Knight met on January 27, 2016. The main discussion of that Subcommittee revolved around the definition of abortion, specifically the language that says “death of the unborn child.” The discussion included the language used by the Medical Board in place of “death of the unborn child.” Further discussion took place regarding what options the Board of Health had in using different language in the Rules and Regulations.

Mr. Harper stated the issue appeared to be that the language “death of an unborn child” was offensive to some and he felt the previous language just went too far. He proposed revising the language to say “termination of the pregnancy”.

A discussion ensued by the Board and it was made clear that the language approved by the Board would still have to be approved by the Legislature. Ms. Melton was asked how the tone of the meeting with the Medical Board went. She stated that she did not think the language change would be approved. Mr. Harper stated that the Medical Board wanted to use the term “fetus” not

“death of an unborn child.” He agreed that the word “fetus” eliminates the first few weeks of pregnancy.

Dr. Foster stated that she had received numerous calls and comments from the public objecting to deviating from commonly used medical terminology. She also stated that she had received comments and calls supporting the Medical Board’s position.

Dr. Zini suggested that the Board collaborate with the Medical Board and the Legislature to discuss the language proposed. He stated that would place into the record that the Board disagreed to the language on the scientific bases as well other issues.

Dr. Smith made some clarifications and observations for the Board. He stated that “unborn child” is defined in the statue as fertilization to birth. He clarified that the Board did not have the authority to change the meaning of the Legislation. He mentioned that with having to go before two legislative committees as well as the Governor’s office, and it is advisable to be as close to the wording of the statue as possible. He also stated his concern for not using the language the Legislature intended to be used.

Ms. Ringgold agreed with Dr. Smith but also stated that the use of “likelihood of causing the death of an unborn child” in the definitions section was inflammatory. She stated that she did not understand how that wording could possibly affect a facility. She stated that she personally felt the Board’s obligation was to the citizens of Arkansas and that the language provided was not helping the situation at all.

Dr. Smith agreed with Ms. Ringgold that “words do matter.” However, he stated what matters most is what pregnant women are receiving in the Department’s educational materials. The materials have been reviewed to ensure that they are not judgmental, are clear and scientifically accurate.

Mr. Brech stated he wanted to reiterate that the Legislature made it perfectly clear, that when they received the Proposed Rules from the Medical Board, that the change to “death of an unborn child” was firmly objected. He also stated the same language “death of an unborn child” is used in the current rules.

Mr. Harper made a motion make the modification of the language from “death of unborn child” to “termination of pregnancy”. Ms. Ringgold seconded the motion.

A roll call was done and each member voted as indicated below:

Lambert	Abstain
Yamauchi	Nay
Bass	Yes
Childs-Bebee	Abstain
Bell	Abstain
Bledsoe	Nay
Braden	Yes

Bryant	Yes
Fincher (Excused Absence)	-----
Foster	Yes
Fortenberry	Nay
Harper	Yes
Hui	Yes
S. Jones	Yes
T. Jones	Abstain
Ringgold	Yes
Tapp	Nay
Thomas-Knight	Yes
Walker	Yes
Whitfield	Yes
Zini	Yes
Smith	Nay
Weinstein	Nay
Johnson	Abstain

Abstain = 5

Nay = 6

Yes = 12

A motion to move forward with the administrative process was made by Mr. Fortenberry and seconded by Dr. Hui. The motion passed without opposition.

New Business

Proposed Rules and Regulations for Massage Therapy in Arkansas

Kelli Kersey, Section Chief, Cosmetology and Massage Therapy, requested that the Board grant permission to move forward with the administrative rulemaking process for the Rules. The changes were made in order to mirror Act 1020 of 2015.

Ms. Tapp made a motion to move forward with promulgation. It was seconded by Ms. Ringgold and passed as presented.

Proposed Evidential Breath Alcohol Intoximeter EC.IR-III Instrument Evaluation Protocol

Laura Bailey, Director, Office of Alcohol Testing, requested approval of a new mobile testing unit. The device is just like the intoximeter approved by the Board but will be mobile. This will ensure that the test can be taken in the appropriate time needed instead of waiting until the person is transported back to the station.

A motion to approve was made by Mr. Fortenberry and seconded by Ms. Tapp. The Motion passed.

**Approval of Active Consent
Request from the ACCR**

Ronald Brown, Center for Public Health Practice, reported that the Arkansas Cancer Registry received three (3) active consents from the North American Association of Central Cancer Registry. The first Consent is to forecast trends in testicular germ cell tumors in the United States. The Second is from the American Cancer Society to update the facts and figures. Third is Medullary Thyroid Cancer verification.

Mr. Hogan stated these had been through the Science Advisory Committee (SAC) chaired by Dr. Bates. Since the three requested are active they require Board approval.

Dr. Hui made a motion to approve the consents. Ms. Tapp seconded and the consents were approved as presented.

ACCR Passive Studies Annual Ratification

Ronald Brown, Center for Public Health Practice, reported that these were Passive Consent Studies that were to be ratified by the Board. The studies consisted of the association between the incidence of Chronic Lymphocytic Leukemia and adults in the US and rural-urban residence, Publication of registry-specific and aggregated relative survival estimates in Cancer in North America, CINA Plus in SEER Stat, Delay Adjustment and ACS Routine Inquires.

A motion was made by Dr. Zini and seconded by Ms. Tapp. The motion carried as presented.

**Proposed Findings of Fact, Conclusions of Law and Order
For Lay Midwife Debra Disch**

Elizabeth Harris, J.D., MPH, Deputy General Counsel, stated that a hearing was held in October 2015. Ms. Disch is not a licensed midwife, however, several patients seen in the local health unit claimed Ms. Disch was their midwife. Ms. Disch was not present for the hearing. Ms. Disch's husband was present at the Board meeting. He stated that he felt his wife was denied a license because she stated in documentation that she had done VBACs in the past. He went on to say this was done in 1981 before any Rules and Regulations were passed. She simply answered the questions truthfully.

Mrs. Harris stated, according to the notifications received from the local health unit that was not correct. She presented the record, which included four statements from different women stating that Ms. Disch had in fact been practicing lay midwifery. She mentioned, for example on July 9, 2015, that the ADH Women's Health received a letter forwarded from the Scott County Local Health Unit stating Ms. Disch provided midwifery care for her during five of her pregnancies, including a recent pregnancy.

Ms. Tapp made a motion to approve the Proposed Findings of Fact, Conclusions of Law and Order. Dr. Smith seconded the motion, and it carried.

Proposed Findings of Fact, Conclusion of Law and Order
For Lay Midwife Venessa Giron

Elizabeth Harris, J.D., MPH, Deputy General Counsel, reported that on January 22, 2015, the full Board adopted the proposed Findings of the Subcommittee regarding Ms. Giron's license. At that time, the Board suspended Ms. Giron's license for one hundred and eighty (180) days contingent upon completion of required activities, outlined in the Findings of Fact, Conclusions of Law and Order. The section did not receive documentation of compliance with those requirements within the thirty (30) day time period set forth in the Order. As a result, another hearing was held in October 2015, and the Subcommittee voted to recommend revoking Ms. Giron's license.

Mr. Fortenberry made a motion to approve the proposed Findings of Fact, Conclusions of Law, and Order. Dr. Zini seconded the motion and it carried as presented.

Proposed Findings of Fact, Conclusion of Law and Order
For Madison County Regional Water

Reginald A. Rogers, J.D., Deputy General Counsel, reported Madison County Regional Water was found by a Subcommittee to be out of compliance with Act 197 of 2011, with the reason being no progress towards completion of the fluoridation project had been made during the time period when an offer was valid. Mr. Johnson with Delta Dental was present and stated that although the grant application period had expired; they would still consider an application and urged them to do so.

Mr. Rogers also stated, for the record, that he informed Madison County of the Board meeting at the November 2, 2015, hearing. It is also reported in the record from the hearing on page 82. However, there was no one present to represent Madison County.

A motion to approve the findings was made by Mr. Harper and seconded by Dr. Bebee. The motion passed.

Proposed Findings of Fact, Conclusion of Law in Order
For Bear Creek Country Store

Reginald A. Rogers, J.D., Deputy General Counsel, stated that the Bear Creek Country Store was found to be out of compliance with National Primary Drinking Water Regulations. He reported that the Bear Creek Country Store had gone through new ownership and he believed the new owners would be in compliance and were unaware of the previous hearing and requirements. Also, it was reported that the Committee recommended waiving the prior owner's penalty of \$30,720.00.

Dr. Zini made a motion to approve the proposed findings. Dr. Bebee seconded the motion and it carried as presented.

**Proposed Findings of Fact, Conclusion of Law and Order
For Sunrise Point**

Reginald A. Rogers, J.D., Deputy General Counsel, reported that Sunrise Point Resort was out of compliance by not submitting monthly monitoring reports and publishing public notices. Sunrise Point was not present at the hearing before the Subcommittee or at this Board meeting. At the Subcommittee hearing, a penalty was assessed in the amount of \$2,000.00, in addition to the \$375.00 in services fees. The amount of \$63,000.00 would be suspended if they were in compliance for twelve (12) months.

Dr. Weinstein made a motion to approve the proposed findings. Ms. Ringgold seconded the motion and the motion carried.

Local Grant Trust Fund

Peggy Walker, RN-BC, Chair of the Local Grant Trust Fund Subcommittee, stated that the Local Grant Trust Fund Subcommittee met and approved Miller County an award/amendment of \$7,995.00 to replace an exterior door due to a break-in.

Mr. Harper made a motion to approve the award. It was seconded by Ms. Walker and was passed as presented.

Appointment of Gary Bass, Pharm D. to the PDMP Advisory Committee

Nathaniel Smith, M.D., MPH, stated that Dr. Gary Bass had been nominated for an appointment to the Prescription Drug Monitoring Program (PDMP) Advisory Committee.

Dr. Smith made a motion to approve the appointment. Mr. Fortenberry seconded the motion and the appointment carried.

Appointment of Ashley County Health Officer

Rick D. Hogan, J.D., General Counsel, stated that a recommendation to appoint Dr. Felicia Watkins-Brown to the vacant position of the Ashley County Health Officer had been made.

A motion to appoint Dr. Watkins-Brown was made by Mr. Fortenberry and seconded by Mr. Harper. The motion carried as presented.

Other Business

Approval of Resolution for Stipend and Travel Reimbursement

Rick D. Hogan, J.D., MPH, General Counsel, explained that, by law, the Board must vote each year on the approval for stipend and travel reimbursement. Dr. Braden made a motion to authorize expense reimbursement for the performance of official board duties to the allowable amount authorized by law for 2016. Dr. Bryant seconded the motion and it passed as presented.

Appointment/Reappointment of Subcommittees for the Board

Rick D. Hogan, J.D., Deputy General Counsel, asked if any members wanted to be added to the list of committee members. Otherwise, he explained the committees would stand as they are in the provided list. Mr. Hogan asked that someone take over the role of Dr. Fritchman as the Administrative Hearings Committee Chair. Peggy Walker agreed to be appointed Chair.

A motion was made by Mr. Harper for the appointment of Ms. Walker. Dr. Bebee seconded and it carried.

Audit Report

Ann Purvis, Deputy Director of Administration, reported to the Board on the Department's annual audit report.

President's Report

Mr. Lambert stated that he appreciated everyone's time, efforts and focus.

He also requested that staff draft a resolution thanking Dr. Fritchman for his more than thirty (30) years of service for the state.

Mr. Harper made a motion to draft the resolution. It was seconded and carried.

Director's Report

Dr. Smith stated that he wanted to cover three items. First, he thanked everyone for the time that they had invested in protecting and improving the health and well-being of all the people of Arkansas. Second, Dr. Smith thanked Dr. Braden for his year of service as the President of the Board. Third, he stated that very publicly Secure Arkansas, on a number of occasions, stated that the Health Department falsified data with regard to the impact of fluoridation. He stated that the law passed in 2011 was not based on that study; in fact, it was based on years of research. There was much documentation, from over many years, that show a very significant decrease in dental caries in the fluoridating community. There was also documentation from the Petit Jean Country Headlight that gave evidence that the dental screening did occur despite what Secure Arkansas alleged.

Public Comments

Jack Abrahamson with Secure Arkansas made comments regarding the organization's position on Fluoridation.

Mr. Harper made a motion and asked that the Board go on the record as accepting Dr. Smith's explanation of these allegations. Dr. Hui seconded the motion.

After more comments from Mr. Abrahamson, Mr. Hogan asked if Secure Arkansas would agree to retract and/or remove any statements from their website that alleged that the Health Department falsified data. Mr. Abrahamson went on and Mr. Fortenberry asked that the Board go forward with the vote for the motion on the table.

The motion carried as presented by Mr. Harper with no opposition.

There was no further business to report and the meeting was adjourned at approximately 12:45 p.m. on Thursday, January 28, 2016.

Respectfully submitted,



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

Date: April 28, 2016