

**MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH
October 23, 2014**

MEMBERS PRESENT

Miranda Childs Bebee, D.D.S., President
Lawrence Braden, M.D., President-Elect
Nathaniel Smith, M.D., MPH, Secretary
Glen "Eddie" Bryant, M.D.
Clark Fincher, M.D.
Alan Fortenberry, P.E.
George A. Harper, J.D.
Susan Jones, M.D. (via phone)
Thomas Jones, R.S.
Jim Lambert
Mary Beth Ringgold
Catherine Tapp, MPH
Robbie Thomas Knight, Ph.D.
Peggy Walker, RN-BC, MSN, CADC
Patricia Westfall, O.D. (via phone)
Anika Whitfield, D.P.M.
James Zini, D.O.

Members Absent (excused)

Beverly Foster, D.C.
Larry Fritchman, D.V.M.
Anthony N. Hui, M.D.
Marvin Leibovich, M.D.
John Richard Page, P.D.
Joe Thompson, M.D., MPH
Terry Yamauchi, M.D.

GUESTS PRESENT

Stephanie Williams, Deputy Director for Public
Health Programs
Joseph Bates, M.D., Deputy State Health Officer
Robert Brech, Chief Financial Officer
Rick D. Hogan, General Counsel
Elizabeth Pitman, Deputy General Counsel
Leslie Lovett, Board of Health Liaison
Mike Wilson, EOC, Technical Manager
Bernard Bevill, Section Chief, Radiation Control
Section
Angela Minden, Radiation Control Section
John Senner, Director, Center for Public Health
Practice
Michelle R. Smith, Ph.D., MPH., Director of Minority
Health & Health Disparities
Glen Baker, M.D., Director, Public Health Laboratory
Dirk Haselow, M.D., Section Chief, Infectious
Disease
Xaiver Heard, Director, Human Resources
Donnie Smith, Director, Center for Health Protection
Travis Henry, Environmental Health Specialist
Becky Binz, Environmental Health Supervisor
Kelli Kersey, Section Chief, Cosmetology
James Joiner, P.E., Facility Engineer
Greg Brown, Section Chief, EMS

MEETING OF THE STATE BOARD OF HEALTH

The Quarterly Meeting of the Arkansas State Board of Health was held Thursday, October 23, 2014, at the Winthrop Rockefeller Institute in Oppello, Arkansas. President Childs Bebee asked those members participating by conference call to give their names. Dr. Susan Jones and Dr. Patricia Westfall responded. President Childs Bebee reported there was a quorum and called the meeting to order at approximately 10:00 a.m.

President Childs Bebee mentioned that a new member was present and asked that everyone announce themselves and what organization or group they represent. All Board members introduced themselves.

Dr. Smith added that he would like to take some time to congratulate members for their achievements. He congratulated Jim Lambert for being featured in the *Health Care Journal of Arkansas*. Dr. Smith announced that three (3) members also serve as County Health Officers: Dr. Zini, Dr. Bryant and Dr. Braden. He thanked them and all the County Health Officers for the work they continue to do.

APPROVAL OF MINUTES

President Childs Bebee entertained a motion for approval of the July 24, 2014 Quarterly Meeting minutes. Mr. Fortenberry made a motion to approve the minutes and Dr. Zini seconded the motion. The motion passed and the minutes were approved as presented.

OLD BUSINESS

Proposed Rules & Regulations Pertaining to Hospitals and Related Institutions

Connie Melton, Section Chief, Health Facility Services, requested approval of the revisions to the Rules and Regulations pertaining to Hospitals and Related Institutions. After receiving comments on the last draft of the Rules, which was brought to the Board in October 2013, the Section brought interested parties together to make modifications.

Ms. Melton explained that the Section was were before the Board with those modifications and asking permission to proceed with the rulemaking process.

Dr. Fincher commented that a subcommittee was formed to review the Rules. That subcommittee recommended that the Rules be approved as presented and that the Section be allowed to begin the rulemaking process.

Dr. Bryant made a motion to approve the Rules as presented. Mr. Harper seconded the motion and the motion passed.

Proposed Rules & Regulations
Pertaining to Critical Access Hospitals

Connie Melton, Section Chief, Health Facility Services, requested approval of the Rules and Regulations pertaining to Critical Access Hospitals. She explained that these Rules mirror the Rules for Hospitals and Related Institutions.

Mr. Harper made a motion to approve the Rules. Dr. Fincher seconded the motion. The motion carried.

Final Approval of the Rules & Regulations
Pertaining to Controlled Substances

Donnie Smith, Director, Center for Health Protection, asked for final approval of the Rules and Regulations Pertaining to Controlled Substances. He stated that Act 1331 of 2013, clarified electronic prescribing of controlled substances, and that these Rules incorporated that clarification. Mr. Smith added that the Rules have been through the process outlined in the Administrative Procedures Act, including the public comment period and review by the Public Health Committee and the Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council.

Mr. Lambert made a motion to approve the Rules as presented. Ms. Walker seconded the motion. The motion carried.

Final Approval of the Rules & Regulations
Pertaining to the List of Controlled Substances for the State of Arkansas

Donnie Smith, Director, Center for Health Protection, asked for final approval of the Rules and Regulations Pertaining to the List of Controlled Substances for the State of Arkansas. He explained that this rule change added additional drugs to the List. Mr. Smith stated that the Rules have been through the Administrative Procedures process, including the public comment period and review by both the Public Health Committee and Administrative Rules and Regulations Subcommittee of the Arkansas Legislative Council. These additions make the list consistent with the DEA's List of Controlled Substances.

Peggy Walker commented that a subcommittee was formed to review the Rules. She recommended that the Board adopt the final Rules as proposed.

Ms. Walker made a motion to approve the Rules as presented. Mr. Harper seconded the motion and it passed.

Final Approval of the Rules and Regulations
Pertaining to Reportable Diseases-Syphilis

Donnie Smith, Director, Center for Health Protection, asked for final approval of the Rules and Regulations Pertaining to Reportable Diseases. The proposed change requires that a second serologic test for Syphilis be performed on pregnant women during the third trimester.

Mr. Smith explained that this is the second time through with a similar revision. After the first draft of the regulation was passed, it was brought to the Section's attention that it could be interpreted as requiring a second HIV testing during the third trimester. That was not the intent of the rule; therefore the Section went back through the process clarify the requirement is for one HIV test and two Syphilis tests during pregnancy.

Dr. Smith moved to accept the changes. Dr. Bryant seconded the motion and the motion carried.

**Final Approval of the Rules and Regulations
Pertaining to the Labeling of Bedding and
Germicidal Treatments**

J. Terry Paul, R.S., Section Chief, Environmental Health Branch, asked the Board for final approval of the Rules pertaining to the Labeling of Bedding and Germicidal Treatments. Mr. Paul stated that Act 1420, which was passed by the General Assembly in 2013, established minimum standards for labeling of bedding and germicidal treatments. The Rules were changed to reflect those new minimum standards. He added that all steps of the administrative rulemaking process had been completed and no comments were received.

Mr. Thomas made a motion for final approval of the Rules. The motion was seconded by Dr. Zini and it carried.

**Final Approval of the Rules and Regulations
Pertaining to Onsite Wastewater**

J. Terry Paul, R.S., Section Chief, Environmental Health Branch, asked the Board for final approval of the updated Rules Pertaining to Onsite Wastewater. Mr. Paul stated that all steps in the administrative rulemaking process had been completed and that a few comments were received. Corrections were made based on those comments.

Mr. Fortenberry made a motion to approve the Rules. Dr. Zini seconded the motion and it carried.

**Final Approval of the Rules and Regulations
Pertaining for Control
of Sources of Ionizing Radiation**

Bernard Bevill, Section Chief, Radiation Control, asked the Board for final approval of the Rules and Regulations for Control of Sources of Ionizing Radiation. The Rules update the therapeutic x-ray radiation regulations. Also, the Rules were updated to reflect modern requirements and registration of x-ray equipment. Mr. Bevill stated that two public hearings were held and that the Rules have gone through both Legislative Committees.

Robbie Thomas Knight made a motion to approve the Rules. Mr. Harper seconded the motion and it passed.

NEW BUSINESS

Proposed Rules & Regulations for Control of Sources of Ionizing Radiation

Bernard Bevill, Section Chief, Radiation Control, asked for approval to move forward with revisions to the Rules and Regulations for Control of Sources of Ionizing Radiation. Mr. Bevill reported that these revisions are necessary in order to maintain compatibility with the U.S. Nuclear Regulatory Commission (NRC). The Section also did some general clean-up of the Rules.

The amendments address decommissioning planning, advance notification to Native American Tribes of transportation of certain types of nuclear waste; technical corrections; and the requirements for distribution of byproduct material.

Mr. Harper made a motion to move forward with the proposed Rule changes. Dr. Zini seconded the motion and it passed.

Proposed Rules & Regulations Pertaining to the List of Controlled Substances for the State of Arkansas

Donnie Smith, Director, Center for Health Protection, asked for approval of the Proposed Rules and Regulations Pertaining to the List of Controlled Substances for the State of Arkansas. Mr. Smith reported these changes were being made because on October 6, 2014, Dr. Smith issued an emergency rescheduling of the Hydrocodone combination products (HCPs) from a Schedule III to a Schedule II. This rescheduling followed a national rescheduling done by the Drug Enforcement Administration (DEA).

Prostanazol and Methasterone will also be added to Schedule II to mirror the DEA's Controlled Substance List.

Ms. Walker added that she reviewed the proposed changes and recommends that the Board approve the revisions for rulemaking.

Ms. Walker made a motion to approve and Dr. Bryant seconded. The motion carried.

Proposed Rules & Regulations Pertaining to Body Art

J. Terry Paul, R.S., Section Chief, Environmental Health Branch, asked the Board for final approval of the Rules and Regulations Pertaining to Body Art. He reported that Acts 596 and 597 regarding Body Art were passed in 2013 by the General Assembly. The amendments are

being proposed in order to upgrade the current practice standards for tattooing, piercing, and permanent cosmetics to meet current industry practices, and to include standards for the practice of scarification, which was legalized in Act 597 of 2013.

Mr. Paul explained that the two main areas of continued controversy are that (1) the Rules treat scarification differently from other body art practices, and (2) the Rules allow the use of over-the-counter topical anesthetics. He then stated that ADH Staff worked with members of the Arkansas Body Modification Association and others from the industry to resolve these issues. That meeting resulted in changes that were incorporated into the version of the Rules being presented today.

Mr. Paul added that Becky Binz, ADH, Environmental Health Supervisor, and Dustin Jackson with the Arkansas Body Modification Association were both present to answer any questions from the Board.

Peggy Walker added that she reviewed the Rules with the help of Department staff and that she recommends the Board approve the proposed Rules to begin the rulemaking process.

She stated that because scarification is currently legal according to Acts 596 and 597 of 2013, I feel it is critically important that we begin the process of regulating those procedures as soon as possible. The Rules as related to scarification may need to be amended as we learn more about the process and what safety and health risks may be associated with it. However, I strongly believe that in order to make scarification as safe as possible, as quickly as possible, we must begin regulating and overseeing these procedures now.

Mr. Jones stated that he felt it was important for the Board to approve the Rules. However, he felt that the Board should be better educated on scarification. He recommended that a subcommittee be formed to discuss the matter further.

Becky Binz also added that she was worried about the adverse effects of scarification on the Department. She stated that she felt it is a medical procedure that will be done by non-medical personnel. She mentioned that Arkansas is the first state to address and legalize scarification.

Mr. Harper asked Mr. Jackson if he was aware of any states that had passed laws or rules that have prohibited scarification. Mr. Jackson responded by saying he was not aware of any.

Ms. Walker stated again she would like to recommend that the Board go forward with the proposed rules in order to protect public health.

Mr. Hogan reminded the Board that the Legislature legalized scarification in 2013. Therefore, by going forward with the Rules the Department has authority to hold administrative hearings, access civil penalties and seek injunctive relief if someone is practicing scarification in such a way that it is harmful to the public.

Mr. Smith asked for clarification from Mr. Jones regarding the subcommittee. Mr. Jones stated that he would like to move forward with the proposed rules and have a subcommittee formed to report back to the full Board. President Childs Bebee agreed to appoint members to a

subcommittee to report to the full Board. The members appointed were Thomas Jones, R.S.; Dr. James Zini, M.D.; Robbie Thomas Knight, Ph.D. and Peggy Walker, RN-BC, MSN, CADC.

Mr. Fortenberry made a motion to move forward with the proposed Rules and Mr. Harper seconded it. The motion passed with one abstention by Dr. Fincher.

Proposed Rules & Regulations Pertaining to Cosmetology

Kelli Kersey, Section Chief, Cosmetology, asked the Board for approval to move forward with the proposed amendments to the Rules and Regulations Pertaining to Cosmetology. Act 1198, which was passed by the 2013 General Assembly, requires the Department to adopt rules for Postsecondary Schools of Cosmetology. The proposed amendments mirror Federal Law.

Catherine Tapp made a motion to approve the proposed amendments and Robbie Thomas Knight, Ph.D., seconded it. The motion passed.

Proposed Revisions to the Rules & Regulations Pertaining to Emergency Medical Services

Greg Brown, Section Chief, Emergency Medical Services, asked the Board to approve the proposed revision to the Rules pertaining to Emergency Medical Services. Mr. Brown stated that in January of 2014, the Board passed the current EMS Rules and those are now effective. However, at that time, Dr. Leibovich had some concerns with some of the language that was in that set of Rules. Over the last year the Department has worked with Dr. Leibovich to address those concerns. The EMS Subcommittee, which consisted of Dr. Leibovich, Dr. Braden and Mr. Harper, met on September 30, 2014, to review the proposed revisions. Dr. Leibovich was unable to attend today's meeting but asked Mr. Brown to share his memo giving his recommendation to adopt the proposed revisions with the Board.

Dr. Braden made a motion to approve the proposed amendments for rulemaking and Mr. Harper seconded it. The motion carried.

Local Grant Trust Fund Funding

James Joiner, P.E., C.E.M., Facility Engineer asked the Board for their approval of the Local Grant Trust Fund awards. He stated that the Local Grant Trust Fund Subcommittee met in September and approved the awards as supplemented.

Mr. Harper made a motion to approve the funding. Dr. Bryant seconded the motion and it passed.

OTHER BUSINESS

Exemption from Annual Registration Fee

Rick D. Hogan, General Counsel, reported that the City of Bentonville Police Department, Fort Smith Fire Department, City of Conway Fire Department, Little Rock Fire Department and El Dorado Police Department requested an exemption from the sixty-five dollar (\$65.00) X-ray annual registration fee. This exemption would allow these squads to use their limited resources to better serve the public. Radiation Control does not have any objections to granting these five bomb squad the exemptions.

Dr. Zini made a motion to approve the exemptions. Dr. Fincher seconded the motion and it carried.

Approval of the Findings of Facts, Conclusions of Law, and Order in ADH v. Danny Caylor and Tawnyta Long

Rick D. Hogan, General Counsel, stated that after a lengthy hearing a subcommittee of the Board agreed on the Proposed Findings of Facts, Conclusion of Law and Order in ADH v. Danny Caylor and Tawnyta Long. The subcommittee consisted of Dr. Leibovich, Dr. Fritchman and Ms. Tapp.

Mr. Hogan explained that the transported patient had been diagnosed as suicidal and had previously tried to commit suicide. The patient was taken from the Ozark Health Center to St. Vincent's Medical Center on February 22, 2014. Upon arrival at St. Vincent's, which was the wrong hospital, the patient got into an elevator alone and was able to exit the hospital while she was visibly upset and against medical advice. A search was conducted for several hours by St. Vincent's security and a BOLO (be on the lookout) was issued by the Little Rock police.

After hearing all the evidence, the subcommittee found violations of the Rules and imposed a penalty of a written reprimand and six (6) months' probation. They also required Mr. Caylor and Ms. Long to participate in continuing education on subjects relevant to the violations.

The attorney for Ms. Long and Mr. Caylor was notified of the Board meeting today, but was not present.

Some discussion ensued on why the recommendation to complete the continuing education was made. Ms. Tapp stated that the subcommittee felt continuing education could better prepare the EMTs if they found themselves in a similar situation.

Mr. Hogan added that the subcommittee expressed some concern that there was not a hold placed on the patient by a medical doctor. Another concern was that there was not enough training or guidance given to the EMTs on how to properly handle such a situation.

It was mentioned that Robbie Thomas Knight, Ph.D., would be willing to work with the Department to set up guidelines establish more mental health training and education or EMTs.

Peggy Walker asked why the medical doctor did not place a 72 hour hold on the patient. She felt the entire situation was not handled correctly. Dr. Bryant also asked what the EMTs should have done to restrain her. He felt that those could be dangerous situations. Mr. Hogan responded that Mr. Brown testified there are three or four other methods the EMTs could have used other than restraining the patient.

It was also stated that there was evidence presented at the hearing that Mr. Caylor and Ms. Long radioed into St. Vincent's and were told the patient was not to come there. However, Mr. Caylor and Ms. Long transported the patient there anyway.

It was visible on the surveillance video that Mr. Caylor and Ms. Long watched as the patient pushed the elevator button, entered the elevator, and left the premises. Neither Mr. Caylor nor Ms. Long attempted to ride with the patient; nor did they assist her in any way after transporting her to the wrong hospital.

Mr. Fortenberry made a motion to accept the subcommittee's Findings of Fact, Conclusions of Law, and Order on both Mr. Caylor and Ms. Long. Mr. Harper seconded the motion. The motion passed with one abstention by Dr. Bryant.

Appointment of Searcy County Health Officer

Rick D. Hogan, General Counsel, added that he had one other item of business for the Board to address. He asked the Board to appoint Dr. Larry B. Jennings as the new Searcy County Health Officer. Mr. Hogan stated that both Dr. Bates and the Searcy County Judge approved this appointment.

Dr. Zini made a motion to approve the appointment. Dr. Fincher seconded the motion and it carried.

President's Report

The President had no further business to report.

Director's Report

Dr. Smith complimented the Board on all their hard work, level of engagement and expertise.

The Director had no further business to report and the meeting was adjourned at approximately 12:20 p.m.

Respectfully submitted,



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