

**QUARTERLY MEETING OF THE
ARKANSAS STATE BOARD OF HEALTH
July 26, 2007**

MEMBERS PRESENT

Robert Sanders, D.O., President
Vickey Boozman
Glen "Eddie" Bryant, M.D.
Caesar S. Divino, D.P.M.
Alan Fortenberry, P.E.
Larry Fritchman, D.V.M.
Dr. Paul Halverson
Richard Hughes
Susan Jones, M.D.
Lynda Lehing
John Page, P.D.
Don Phelan
Dr. Jack Porter, President-Elect
Dr. Jane Sneed
Peggy Walker, RN
Dr. Patricia Westfall
Dr. Terry Yamauchi

GUESTS PRESENT

Charles McGrew, DOH
Donnie Smith
James R. Phillips, M.D., DOH
Dr. Richard Nugent, DOH
Rick Hogan, Legal Counsel
Reggie Rogers, Legal Counsel
Dr. Jennifer Dillaha, DOH
Dr. Glen Baker, DOH
Connie Melton, DOH
Jane Gaskill, Health Fac. Serv.
Renee Mallory, Health Fac. Serv.
JoAnn Bolick, Child & Adolescent Health
Charles Beets, DOH Immunization Sec.
Terry Paul, DOH
Robert Hart, Engineering
Jerry Duncan, Protective Health
Ed Barham, Communications
Jodiane Tritt, Dir. Community Support
Suzanne McCarthy, ACHI
Ida Darragh, AR Midwives
Mary Alexander, AR Midwives
Jimmy Wallace, AR Municipal League
Richard Bell, AR Agri. Dept.
Nell Smith, Arkansas Dem.-Gazette
Nancy Cox, Legal
Kristy Havens, March of Dimes
Jon Gambrel, Associated Press

MEMBERS ABSENT (excused)

Dr. Anthony Hui
Thomas Jones, R.S.

Russ Sword
Timothy Webb, M.D.

QUARTERLY MEETING OF THE STATE BOARD OF HEALTH

The July Quarterly Meeting of the Arkansas State Board of Health was held Thursday, July 26, 2007 in the Public Health Laboratory building, 201 South Monroe Street, Little Rock, Arkansas. President Sanders called the meeting to order at approximately 10:00 a.m.

APPROVAL OF MINUTES

President Sanders called for the approval of the minutes from the April 26, 2007 quarterly meeting. Dr. Page made the motion to approve the minutes. Dr. Divino seconded the motion, and the minutes were approved as presented.

NEW BUSINESS

Rules and Regulations Pertaining to Imported Foods

As Rick Hogan, General Counsel, took the podium to explain the proposed rules and regulations, Dr. Halverson first introduced fellow cabinet member, Secretary of Agriculture, Richard Bell, who was accompanied by senior officials from the Department of Agriculture. He stated that they have been active partners with the Department in the issues of food protection and food safety in our state. Dr. Halverson presented a synopsis of the involvement of the Department of Health in activities relative to the issue of food safety, specifically the concern around imported Chinese catfish.

Dr. Halverson stated that the statutes and rules and regulations related to health in Arkansas make the Department of Health and the Board of Health responsible for the security and safety of food, particularly safety from unadulterated foods. It is our responsibility, should we determine that the foods are unsafe, to take remedial action and to make sure, if there is an imminent health hazard, those hazards are addressed. We do that in close connection with the Department of Agriculture. The U.S. Department of Agriculture has a very active role in food security and safety, particularly as it relates to meats, poultry, and eggs. They have a primary responsibility for all foods and substances, and this covers the fish issue. Less than one percent of the imported fish is actually tested, which has caused concern in the United States because of the reports of adulterated substances found within the fish. As a consequence, there is increased attention to this issue.

On May 1, 2007, the Health Department was notified by the Arkansas Agricultural Council about the concern of antibiotics in catfish products from China imported to Arkansas. The primary concerns relate to flora quinolone antibiotics, and malachite green and crystal violet which are anti-fungal agents or dyes used as disinfectants and fungicides in certain circumstances. These substances are not allowable in fish or in the food supply in the United States. There is also concern about the addition of melamine to the food supply. We partnered with the Department of Agriculture and began attempting to locate the imported fish in Arkansas. The Department of

July 26, 2007

Page 2

Agriculture was able to furnish a list of the wholesalers that imported the fish from China, and we began working with the FDA to develop a testing approach.

The sampling is relatively complex; and we found it to be very important that we use the FDA approved methods for sampling the fish. Five samples were taken of Chinese catfish from various food distributors on May 7th. Subsequently, additional samples were taken of Chinese tilapia and two samples from domestic catfish we believed to be from Arkansas.

We have since had numerous conversations with high ranking officials at the FDA and with individuals at the U.S.D.A., and we have also had the opportunity to testify before our agriculture committee of the legislature. On the basis of the positive test we found, the FDA placed an import alert on the importer of the fish that actually contained the crystal violet. The problem got some resolution by the FDA taking action to place a requirement for testing before being allowed to enter the U.S.

In front of you today is a proposed rule which would make clear that, in the event there is concern related to the safety of any particular food item, we can require testing. The proposed rules create an explicit authority around the role of the Board of Health and the Health Department in these matters. The current law provides general authority but we wanted to clearly spell out what the authority would be and some of the procedures we would use. It is not limited to catfish, as we believe the continuation of imported foods into our country and our state will continue to be an issue. (A question and answer period ensued, after which Mr. Hogan explained the proposed rules).

Mr. Hogan stated that the real meat of the rules and regulations is contained in Section IV. This is the new part of ADH's authority or regulations. It defines specific authority for the director or state health officer to act concerning distributors and retailers, and specifically concerning the delivery of foods. It is divided into two general categories; one is the specific authority to issue an order on behalf of the state health officer. He had the general authority under our health code to do so anyway, but this is specific as to adulterated foods. The second part deals with imminent peril. If the director or state health officer finds that there is imminent peril to the public health and safety, he has the authority to suspend the retail sale of food articles.

Section V. defines specifically incorporating the other penalties that are in our Food, Drug and Cosmetic Act with the general penalties that the Board of Health can assess about adding \$1,000 per day for civil penalty fines. One thing that is different about these regulations is that typically the Administrative Procedure Act would say that they would be effective 10 days after filing. The specific statute here mentions 30 days after promulgation.

After discussion among those in attendance, Mr. Hogan requested that the Board approve going to the next step, that of a public hearing. Dr. Porter made a motion to begin the administrative process. Mr. Phelan seconded the motion and the motion carried.

**Proposed Amendments to the Rules and Regulations
For the Childcare, Kindergarten Through 12th Grade
And College/University Immunization Laws**

Dr. Jim Phillips presented the proposal, explaining that it was broken down into three categories. For childcare, there is the addition of the requirement for pneumococcal vaccine. When varicella was made a requirement, parents who gave a history of clinical varicella disease or physicians who verified that a child probably had varicella, then they could be excused. The third point applies both to childcare and kindergarten through 12th grade, and that is that the Arkansas Department of Health enforcement language be stricken from the rules and regulations.

Mr. Hogan stated that the reason for this is to be consistent with the Arkansas law which was unsuccessfully amended last session. Currently the education code acts as the enforcer because it prohibits children from going to school if they have not obtained these vaccinations. Under the statute, Childcare, Kindergarten, and Early Childhood education facilities are responsible for enforcement. When you're talking about colleges and universities, the state law specifically puts the responsibility on the Board of Health and the Department of Health to enforce that aspect of it. In the next to last page of the draft, colleges and universities are left in. The reason that had to be excised was to be consistent with the State statute about the enforcement aspect of it. Legislative remedies in that area will be pursued in the future and we will try to get that clarified in the next session.

President Sanders inquired regarding Childcare, "the Division of Daycare and Early Childhood Education is going to be responsible for enforcement," where is that division? Is that in the Department of Health? Mr. Hogan stated that it was a part of DHS' responsibility. It is a separate division within the Department of Human Services.

Dr. Fritchman read the paragraph "Colleges and Universities: No part-time student housed in on-campus premises and no full-time student may attend a public or private college or university in this state unless he or she has furnished proof, within such time as set by the college or university," and asked if he were to decide he wanted to become a college freshman at the age of 60, would he still have to give proof of all the immunizations he had had. Mr. Hogan stated that unless there was a provision for a waiver of it, but he was not familiar with such.

The Board members and Mr. Beets discussed the pneumococcal vaccine and Prevnar.

Dr. Phillips stated that the primary recommendation of the Advisory Committee for immunization practices is the two months, four months, six months and twelve to fifteen months. He stated that there may be a small number of outliers that Dr. Sneed is referring to. Those could be handled on an individual basis, but we probably need some rules and regulations concerning that.

July 26, 2007

Page 4

President Sanders asked that this general regulation go forward to the administrative process and asked that the Immunization Subcommittee look at the varicella and pneumococcal vaccines and should that be substituted in the rule and regulation at some point in the future.

Dr. Yamauchi made the motion to go forward with the administrative process and to have the Subcommittee look at the two vaccines. Dr. Page seconded the motion and the motion carried.

Dr. Phillips reads item number 4., verification that these "Requirements were edited for clarity and compliance with the Advisory Committee on Immunization Practices."

Under Kindergarten through 12th Grade there is the proposal to eliminate the need for the dose of polio vaccine after the 4th birthday for kindergarten children who have previously received four or more doses. Again, the same recommendation concerning varicella and the striking of the enforcement language, and also that these have been edited for clarity and compliance.

For college/university, the proposal is to add a requirement for mumps vaccination and to define a freshman as a student with less than 30 hours of credit; defined a foreign student as any student born outside of the U.S., and students that are 100% correspondence students, who are not physically on campus, would also be excluded from these immunization requirements.

Rules and Regulations Pertaining to Onsite Wastewater Systems

Mr. Terry Paul, R.S. presented three regulation changes for full review to go through the administrative procedures. Last year we had our first overhaul of the onsite wastewater systems regulations in 29 years. Today we are basically cleaning up a few language problems and errors that we found as we put that regulation into use. There is not anything new in this particular regulation.

Dr. Fritchman asked Mr. Paul, if we have already been putting in experimental systems, do you know where these systems are. Have you been monitoring these systems? Are they working? Are they failing? Are we monitoring the ones that are already in existence? Mr. Paul replied that this particular part is not a change, but it is still an area of big concern. He stated that the regulation last year included and also excluded some systems that had been previously considered experimental because they were used in different places around the country. The regulation last year that we replaced had rock plant filters in it which we found to be not functioning correctly. They were undersized and we took them out of our regulation. As far as an experimental process now, we are looking at anything that is not clearly defined in the regulation, and we will track those, and we will monitor those. The only thing now that we are working on is drip irrigation systems. The act itself allows for use of experimental designs, if we can find merit in those designs and there is a reason to explore that. Any system that we do along those

July 26, 2007

Page 5

lines, under the heading "Experimental," from now on will be tracked, and will be detailed down to the GPS coordinates and sampled.

Ms. Boozman stated that several times throughout the draft it refers to the Arkansas Division of Health. Mr. Paul stated that that could be changed and stated that in this particular draft there was a new law that was passed by the legislature, and we have made the changes in there that reflected the new fee structure.

Ms. Boozman had a question concerning the installer's registration fee that went from \$50.00 to \$100.00. Mr. Paul explained that that was the law that went into effect August 1st. Another change was made in that same law where maintenance personnel now are licensed individuals; therefore, we have a license to go after them if they're not performing their duties as assigned.

Ms. Boozman questioned the sentence "A registered installer shall be present at the job site during all phases of construction." Mr. Paul stated that the change that went into effect puts the legal responsibility on the installer to make sure the system is installed as designed. In this case, the way the law is written now, whether we make the inspection or not, that installer has to certify that he has put that system in according to our regulation and according to the way it was designed.

Ms. Boozman asked if this was the part of the law that they passed, that you must be present at the job site during **all** phases of the construction, not just during the time that that particular work is going on, but **all** phases. Mr. Paul stated that it was just construction of the septic system, or onsite wastewater system. Dr. Halverson said that that could be modified to say "of the septic system." President Sanders suggested that it could say instead of "construction" maybe "installation of the system." Ms. Boozman requested that it be changed.

Mr. Phelan made a motion to begin the administrative process with the recommended changes. Dr. Page seconded the motion and the motion carried.

Rules and Regulations Pertaining to Food Service Establishments

Mr. Paul stated that regarding the Coffee Kiosk, some of the language was taken out of the current food regulations that required mobile units to be moved every 14 days, and incorporated a way to regulate the coffee kiosks. They don't handle potentially hazardous food but they do have milk. These kiosks have popped up all over the country and some popped in on us before we had a good handle on it, and in the Legislative Session we did some maneuvering with a mobile food service and we just basically changed a few things to take care of that. Instead of requiring a mobile unit to move every 14 days we're requiring them to document when and how often, and there's a certain time frame in there, of sanitizing their water tanks. That's the major change. The 14 days was only incorporated originally because the state fair lasted 10 to 14 days.

Mr. Fortenberry made the motion to begin the administrative process. Dr. Page seconded the motion and the motion carried.

Rules and Regulations Pertaining to Mobile Home and Recreational Vehicle Parks

Mr. Paul advised the Board that there hasn't been a substantial change to this particular regulation for twenty years. The biggest change is that a trailer park is being redefined from having two or more trailers on a lot to three or more trailers on a lot. The former regulation is outdated. We have updated this regulation to match current codes, philosophies, etc. that are defensible and reasonable. We have defined the difference between an R.V. park type situation and a mobile home park.

There was no further discussion and Mr. Fortenberry made the motion to begin the administrative process. Dr. Page seconded the motion and the motion carried.

Rules and Regulations Pertaining to the Testing of Newborn Infants

Dr. Richard Nugent, MD, MPH, Family Health Branch Chief, told the Board he would like to recognize three individuals in the room who have been an important part of the rules and regulations process: Dr. Glen Baker, Director of the State Laboratory and JoAnn Bolick, Chief of the Child and Adolescent Health Section, and Kristy Havens, with the State Chapter March of Dimes. The National Chapter of the March of Dimes has taken a huge interest in this process. One version of these regulations has previously been approved; however, there was interest in perhaps allowing time, if we could possibly mount these services prior to July 1st, 2008, to introduce some language that would allow us to maybe start a little earlier.

It states under the title "Certification" on the last page, "However, the Board may, upon certification by the Department that it has achieved the capability of testing and monitoring those conditions, amend the effective date after 30 days' notice to interested parties." That is the main reason we are bringing these back to you. We have gone over these rules with a fine-tooth comb.

Dr. Nugent stated the immunization program and the way it links birth certificates and doctors' offices, and now other types of folks throughout the state, is an ideal which likely will need to go forward to uniting these programs. We will start with the laboratory and with a software system that is linked into the laboratory machinery, and we will build on that. The Department is also looking at a major renewal of its birth certificates and vital records. We will be applying in August for a major grant to make our vital records electronic, so that the whole vital records system can be on the internet, and can be entered, and this information should fall right in line with that. I can't tell you when that's going to happen.

Between now and July 1st of 2008, ADH will be contracting with the sub-specialists at Childrens' Hospital in pulmonology, biochemical genetics, hematology and

July 26, 2007

Page 7

endocrinology to make sure that our protocols are medically correct, and we will be able to pay for their time for that consultation.

In the first change, the language was to assure that the rules properly described all of the conditions tested for both old and new in understandable language. We wanted to emphasize the differences between hemoglobinopathy diseases and their corresponding traits. The second purpose was to ensure that the names and abbreviations for all of the conditions were used uniformly. The third purpose was to bring more emphasis on the Department's use of physician sub-specialists and clarify the recommendations that physicians readily consult with medical sub-specialists about these diseases.

The fourth point was to provide clear guidance to physicians about reporting their subsequent health assessments on affected children so that the database could accurately reflect the outcomes. The fifth point was to provide a clear regulatory basis for ADH to set up protocols for follow-up that will guide cooperative actions between the screening programs and physicians. The sixth point was to bring more emphasis than before on the optimum timing to obtain heel-stick specimen, that being between 24 and 72 hours after birth. Particularly for PKU and Galactosemia, it's necessary for those children to have started either formula feeding or breast feeding in order for the metabolic deficiency to show up in these tests. Finally, we wanted to ensure that throughout the six or so sections of these rules all of the **new** conditions had been appropriately entered and addressed.

Dr. Nugent stated that the midwife will be responsible for making sure that the family is told that these tests need to be done. The family will need to get the child to the hospital or to the doctor to have these tests done in a timely fashion. To make sure we get it by the seventh day, the birth attendant must set that in motion in some way, but collecting the specimen is not a skill that midwives are required to have. So the child must be brought to the doctor's office or hospital or a place where the heel-stick can be done by a trained person. Dr. Konarski-Hart says on page 5 it states that the physician or medical attendant shall be responsible for the appropriate medical treatment, referral and/or retesting within 7 days of notification. Dr. Nugent stated that is the medical attendant, it does not mean the lay midwife. We have not trained our public health nurses in doing that procedure. Generally we would depend on local physicians or hospitals to do it.

There was discussion among the Board members, Dr. Nugent, and Mary Alexander, Licensed Midwife, concerning the testing of newborn infants.

Dr. Nugent read the language in the newborn screening rules for midwives. "The licensed lay midwife is responsible for advising the parents of this law and the procedure for conducting newborn screening and documenting that a blood sample is obtained after 24 hours and no later than seven days after the birth." Dr. Porter asked if this language should mimic that language. The language you propose to us does not mimic that language. Dr. Nugent asked if Dr. Porter was suggesting that we add that

sentence into this language to clarify it. Dr. Porter suggested that they read alike. Dr. Nugent agreed. Dr. Nugent stated that the word "birth attendant used in the hospital setting context" is a little vague and he would clarify that to the delivering physician.

Dr. Nugent stated, after additional discussion, that the language could be clarified and Dr. Halverson suggested that with the modifications, in the spirit of the discussion, we move forward with these regulations. President Sanders clarified the motion as saying to move these regulations on to administrative process with the clarifications of the rules that were discussed.

Dr. Sneed made the motion to carry forward to the administrative process. Mr. Phelan seconded the motion and the motion carried.

Forms for the Regulations Governing the Practice of Lay Midwifery in Arkansas

Dr. Nugent stated that with diligent efforts the Rules and Regulations applicable to the Practice of Lay Midwifery have been changed. What we are now doing is moving forward and providing forms that will specifically express the expectations and the standards for training of lay midwives and for reporting. These forms are quite detailed, more so than in the past. So since they do of necessity help to implement the rules, we are bringing them back to the Board for your review and approval.

After discussion from the Board members, Dr. Nugent and the lay midwives, Mr. Hughes made the motion to approve the forms for the regulations. Dr. Page seconded the motion and the motion carried.

OLD BUSINESS

Proposed Adoption of Rules Regulations Pertaining to Public Water Systems

Mr. Robert Hart, Director, Engineering Section, stated that he was before the Board to request the final adoption of the proposed changes to the rules and regulations pertaining to public water systems. The first change is to adopt a new approval date on the regulations that we can adopt the by reference to the EPA drinking water regulations. The other purpose of the regulation is to increase the fees assessed to public water systems which they directly pass on to customers on the fees that are paid to the Department of Health. Back in January the Engineering Division of the Department of Health successfully sought legislative approval to change the statutes to increase those fees. The statutes actually only authorized an upper limit for the fees. The statutes required that a separate action be taken by the Board of Health to actually separate the fees. That request was made in March. The Department has gone through public hearing and notice and no comments were received. The Department has gone through the administrative procedures with the exception of the legislative council which will next meet in August.

Mr. Fortenberry made the motion to adopt the proposed rules and regulations. Mr. Phelan seconded the motion and the motion carried.

Proposed Adoption of the Rules and Regulations for Hospitals and Related Institutions in Arkansas

Connie Melton, Section Chief, Health Facility Services, asked the Board's approval of the Proposed Adoption of the Rules and Regulations for Hospitals and Related Institutions in Arkansas. She stated the 30-day public comment period had been completed and had presented to the two legislative committees. Clarification and information was provided to Legislative members. She stated that the Arkansas Hospital Association supported the proposed adoption. Revisions were made as suggested.

Dr. Page made a motion to adopt the proposed rules and regulations. Dr. Jones seconded the motion and the motion carried.

Impairment Working Group Report

Mr. Hogan stated that the group has continued to meet with the Arkansas Medical Foundation Group. We decided to look into a program to handle substance abuse and alcohol related problems for DOH licensees. The two largest licensees were the EMTs and the rad techs, and then the midwives as well as the profusionists. The Group discussed the numbers with the Arkansas Medical Foundation, and they covered three primary areas – one of which is substance abuse, mental health, and the third is boundary issues that have to do with sex with clients, or something like that. The group's charge was to look purely at substance abuse issues, and that is where our attention has been directed. Mr. Hogan stated that he had told the Foundation that he would make the Board aware of it today to see if the group should expand in any of the other issues as far as this type of program that we are looking to develop within the Department on behalf of the Board.

The Foundation enters into a five-year contract with the licensee for monitoring, collection and determination for staying in the program, which they found to be very successful. Physicians apparently have a different law that provides that it is part of the licensing fee that physicians pay, so the cost is spread across the entire profession. All of the other professionals they deal with, like dentists and other licensees, do not have a provision that spreads it across the licensees' fees. It is a direct cost that is borne by the licensees themselves, not as part of their licensure. If the DOH decided to go along with a fee added on to the licensure, then that would possibly require additional legislation or regulation. We did find out that there is a great deal of financial cost. To go through the rehab program, they estimated it could be as little as \$25,000 or as much as \$35,000, from beginning to end and that is borne by the licensee. It's a costly program. They could always say that they don't want to do it, and their license would not be reinstated or they wouldn't be able to practice their profession.

Mr. Hogan thanked Dr. Konarski-Hart and Ms. Walker for their help.

President Sanders stated that the current regulations for licensure is, if they are abusing, it is just an automatic termination of their licensure, so would we need to make new regulations to add this as a possible exit strategy instead of termination of licensure? And considering the salaries that these people make, would it not be better to spread the cost across the entire licensed group, and add an extra fee to their licensure versus having an EMT pay \$25,000 for rehabilitation?

Mr. Hogan stated that the group had looked at the cost early on, and the additional staff that would be needed to monitor, the ability to testify before the Board, and keeping up with making sure the specimen - they have a staff that does all of that. There's another issue about the labs themselves being able to separate the specimens through an independent lab or confirmation, and it wouldn't be in-house through our labs. So there wouldn't be any question of the chain if we were revoking someone's license based on that. We discussed it early on and moved on to the Medical Foundation, but we can go back and look at it.

President Sanders stated that he would think the chain of custody for samples could be brought into question very easily if you have a friend who works in the lab. At some point that could happen.

Mr. Hogan advised that he would have the various programs develop a questionnaire for their licensees or others to determine which option they would prefer. We'll do that and report back to you at the next Board meeting.

OTHER BUSINESS

Update from Vaccine Study Group Subcommittee

Dr. Jack Porter stated that the group met at 7:30 this morning. A workable protocol was developed to evaluate all the various vaccines so that we can keep standardization in our approach to each one. We've discussed varicella and pertussis, and we have come up with recommendations for both of those. We have a recommendation for Rotavirus. We are going to have a working lunch, and try to knock out influenza, with attention to the nasal, and then we will get to thimerosal. President Sanders thanked Dr. Porter for the report.

Approval of Surgeon General and Ratification of Dr. Paul Halverson

Rick Hogan stated that this approval requires two basic motions. The new law that separated DHS from the Department of Health provides that the Governor appoint a surgeon general and also requires that the Board approve or not approve the

Governor's appointment. We first of all need a motion to approve Dr. Joe Thompson as Surgeon General.

Dr. Terry Yamauchi made the motion to approve Dr. Thompson as Surgeon General for Arkansas. Dr. Page seconded the motion and the motion carried.

Mr. Hogan stated that the second part requires a motion to ratify Dr. Halverson as secretary of the Arkansas State Board of Health. Dr. Eddie Bryant made the motion to ratify Dr. Halverson as Secretary of the Board. Dr. Konarski-Hart seconded the motion and the motion carried.

TB Patient Franklin Greenwood

Dr. Jim Phillips presented an update on TB patient Franklin Greenwood. Mr. Greenwood was first diagnosed with smear and culture-proven tuberculosis on 2005 and was treated in Monroe County. In 2006 he was again identified as having smear positive and culture-positive tuberculosis. The Health Department issued an Order of Isolation and he was admitted to the University Hospital. He escaped his hospital confinement and was finally picked up by the police after 17 days and placed back in the University Hospital under security guard by order of Judge Brantley. He is smear-negative so his infectivity is very minimal. He has been transferred to a detention facility for completion of his treatment.

Mr. Hogan stated that Mr. Greenwood came in contact with the criminal justice system. We typically don't lock up people with TB, they take their medicine and they are not a problem. We're not about punishment – we're about prevention. The statute says you have to have active tuberculosis in an active state and communicable and infectious. In this case we had evidence based on a chest X-ray that was taken June 29th. In his case, he had taken medicine for awhile, then he stopped taking it, and then he refused to take his medicine. It requires that he have active TB and be in an active state and that he be recalcitrant. We issued an emergency order on June 29th by the state health officer requiring the isolation of the patient, and then followed up by a court order, which included not only the isolation but the requirement that he be restrained since he had proven that he was a flight risk by breaking out the window and running away from UAMS.

Mr. Hogan stated that we have some issues that we are going to follow up on to see if additional legislation or regulation is needed in this area. We have had complete cooperation from law enforcement and from the prosecutor's office. Mr. Greenwood would have typically had to make a \$10,000 bond which would have been easier for him to bond out, but because of his medical problems and the other risks that he posed, they secured a bond of \$100,000 and that allowed him to stay protected within the confines of the jail system so we could continue to medicate him. We worked with the jail to develop a plan to make sure he continues to get the medicine so he won't develop any kind of drug resistant to tuberculosis.

Appointment of New County Health Officers

Mr. Hogan reported that at the time today's Agenda was prepared, the Pike County Health officer said he wanted to resign. He was going to be replaced but in the interim he reconsidered his resignation. Therefore, we do not need to address Pike County. Dr. Stephen Fiedorek meets the qualifications of the statute, and I would ask that the Board move that he be appointed Lonoke County Health Officer.

Mr. Phelan made the motion to appoint Dr. Fiedorek as Lonoke County Health Officer. Dr. Page seconded the motion and the motion carried.

Dr. Joe Wharton also meets the qualifications of the statute, and I would ask that the Board move to appoint him as the Bradley County Health Officer.

Dr. Konarski-Hart made the motion to appoint Dr. Fiedorek as Lonoke County Health Officer. Dr. Page seconded the motion and the motion carried.

Reappointments to the State Committee of Plumbing Examiners

Mr. Jerry Duncan stated that the terms of the Journeyman Plumber and Consumer Representative had expired. He asked the Board to reappoint Aubin Siria as the Journeyman Plumber Representative and Elton Chartrand as the Consumer Representative to the Committee of Plumbing Examiners. A motion was made, seconded, and carried, and so appointed.

PRESIDENT'S REPORT

President Sanders stated that he was nearly halfway through his term and he was having a good time. He stated that it is a great Board which he enjoys, and looks forward to seeing everybody at Mt. Magazine in the fall.

DIRECTOR'S REPORT

Dr. Halverson thanked the Board for its continued support. He stated that he appreciates serving as the State Health Officer, Director of the Department of Health and also as the Board's secretary. He then turned the floor over to Rick Hogan, General Counsel, regarding a suggestion by the Legislative Committee. Dr. Halverson stated that he serves in the capacity as State Health Officer but he is actually a tenured professor in the Department of Health Policy Management, College of Public Health, which potentially creates the appearance of a conflict of interest as it pertains to issues around UAMS. So Rick Hogan will explain an internal policy that has been developed in an effort to try to clarify that in writing.

Mr. Hogan passed around to the members a draft of the "Internal Policy: Separation of Duties and Responsibilities in Order to Ensure Ethical Standards and Avoid Conflicts of Interest," for their review. Dr. Sanders made the comment concerning the "WHEREAS"

July 26, 2007

Page 13

clauses and that there was no "RESOLUTION." He stated that the last three needed to be "THEREFORE RESOLVED." Mr. Hogan agreed that that was absolutely correct, and would be added to the final internal policy.

Mr. Hogan stated, to avoid any appearance of a conflict of interest with UAMS in issues involving regulatory matters or contractual relationships in those two areas, the Director, because of his affiliation with UAMS and the Department of Health, would recuse and abstain from participation as a signatory on any order generated by the Department or contract entered into between the Department and UAMS as it pertains to the issuance of an order or contract, as long as the dual relationship shall exist with the separate agencies.

One thing we did add, as a method notice, is in paragraph 10, which affects the Board directly. It states, "In the event that this policy should be violated intentionally or otherwise, notice of said violation shall be sent to the Arkansas State Board of Health President and the Office of the Governor within five (5) days' notice of the alleged violation." Mr. Hogan stated that a concluding "Therefore" resolution would be added.

Dr. Porter asked if there is a protocol that needs to be put in place, should a violation occur, that would indicate what we do with that violation, or will we try to wing it after that point? Mr. Hogan stated that a provision could be added that the President can designate certain members of the Board to initiate an investigation of the matter. A provision will be added that the President could designate a subcommittee of the Board for purposes of investigation of the matter, if it ever comes to the President's attention.

President Sanders asked, considering the fact that the Health Department works very closely with the School of Public Health, and with UAMS, if this should be a more generic policy, not particularly naming Dr. Halverson per se? He will probably give lectures at both places, and probably will receive some remuneration for that or some payment or be employed. Mr. Hogan responded by saying that he would prefer to make it specific as it is, in terms of investigation or anything which surrounds this particular Director and his signature or his actions on any contract or order. I think it's a good idea for the future but I would prefer to leave that to a future type of agreement.

Mr. Hogan asked for a motion to approve the policy, given the suggestions that we have made today, that the President would designate a subcommittee in case an investigation is warranted and that there would be a "therefore clause" as part of the resolution.

A motion was made to approve the policy and seconded. The motion carried.

Dr. Halverson continued with his report and acknowledged that this is our first meeting of the Arkansas Board of Health with the new Arkansas Department of Health. We're very appreciative of the Governor's leadership. We did have a seamless transition effective July 1st this year. I am pleased to report that by the end of this month we will have back all of the former employees from the Department of Health that were

July 26, 2007

Page 14

transferred to the Department of Human Services. You may know that we are now in the process of advertising and recruiting a new Chief Financial Officer, Chief Information Officer, Human Resource Officer, and a Procurement person. There were two conditions the Governor placed on us in effectuating the de-merger; one was that it be cost-neutral and that means no new money to make this happen so we are having to utilize current resources to effect this; and, secondly, no interruption in services.

I also wanted to note for the record that we have now passed the first year of the Clean Indoor Act Law and it has gone very well. The only point I wanted to try to make to you is that the vast majority of Arkansans have complied with the law. Of over 14,500 food service establishments in our state, we have received only 591 actual complaints. We have followed up on inspections on 23 occasions and we have sent letters. As we move into the next year, and subsequent years, we are now going to be implementing a strategy that will actually trigger an investigation. When we receive a complaint, we will do an unannounced investigation, followed up by another unannounced investigation, to make sure that there is compliance. If there is evidence of noncompliance, we will be bringing those individuals to the attention of the Board.

That concludes my report except to say that one of the things that I have tried to do is visit our 93 health units throughout the state. I do appreciate the Board's commitment. I would remind you that the Board retreat which is ordinarily held in October will actually be held on November 1st and 2nd at Mt. Magazine. I look forward to a productive time together. This has always been an exciting time for the staff, and I hope for the Board, and I am sure that this retreat will be no exception to a wonderful opportunity to spend some time together.

There being no further business, the meeting was adjourned at 12:15 p.m.

Respectfully submitted,

Paul K. Halverson, DrPH
Director DOH