

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

April 27, 2006

MEMBERS PRESENT

Karen Konarski-Hart, D.C., President
Robert Sanders, D.O., President-Elect
Glen "Eddie" Bryant, M.D.
Glenn Davis, M.D.
James Davis
Caesar S. Divino, D.P.M.
Alan Fortenberry, P.E.
Larry Fritchman, D.V.M.
Dr. Paul Halverson
Richard Hughes
Susan Jones, M.D.
Tom Jones
Lynda Lehing
William R. McKiever, M.D.
John Page, P.D.
Don Phelan
Dr. Robert Sanders
Jane Sneed, M.D.
Russ Sword
Dr. Joseph W. Thompson

GUESTS PRESENT

John Selig, Director, DHHS
Ray Scott, Deputy Director
Dr. Joe Bates, DOH
Steve Boedigheimer, DOH
Rick Hogan, Legal Counsel
Reggie Rogers, Legal Counsel
Robert Brech, Legal Counsel
Nancy Cox, Legal
Charles McGrew, DOH
Jennifer Dillaha, M.D., DOH
Usman Patel, DOH
Jerry Duncan, DOH
William Lynn Bennett, Plumbing Ex. Bd.
Dr. Sandra Snow, DOH
Karen Fowler, DOH
Terry Brumbelow, DOH
Catherine Hall-Tapp, DOH
Martin Nutt, Engineering, DOH
Dr. Glen Baker
Ann Wright, DOH
Julie Munsell, DHHS
Michelle Priebe, DOH
Charles Beets, DOH
Carl Graves, DOH
Terry Paul, DOH
Sen. Tracy Steele
Dennis Sternberg, AR Rural Water Assn.
Nell Smith, Arkansas Dem.-Gazette
Daniel Nasaw, Arkansas Dem.-Gazette
Barbara Kumpe, AR Heart Assn.
Gary Oden, AR Environmental Academy
Donald Goens, Supermarket Investors, Inc.
Jeanie Roystuart, Supermarket Inv., Inc.
Mike Griffith, Julie's Restaurant Owner
Don Dugan, Market St. Grill & Pub Owner

MEMBERS ABSENT (excused)

Perry Amerine, O.D.
Anthony Hui, M.D.
Timothy Webb, M.D.

Jack Porter, DDS
Peggy Walker, RN

QUARTERLY MEETING OF THE STATE BOARD OF HEALTH

The April Quarterly Meeting of the Arkansas State Board of Health was held Thursday, April 27, 2006 in the Charles Hughes Board Room at the Freeway Medical Building in Little Rock, Arkansas. President Konarski-Hart called the meeting to order at approximately 10:05 a.m.

APPROVAL OF MINUTES

President Konarski-Hart called for the approval of the minutes from the January 26, 2006 quarterly meeting. Mr. Phelan made the motion to approve the minutes. Dr. Page seconded the motion, and the minutes were approved as presented.

NEW BUSINESS

Proposed Rules and Regulations for Clean Indoor Air Act

Paul Halverson, DrPH, Director, Division of Health, stated that it was a wonderful day in Arkansas and a proud day for the Board of Health. He stated that we have the opportunity now to look at the first draft of the Clean Indoor Air regulations thanks to Gov. Huckabee and the legislature. For the most part, the regulations mirror the content of the law. The Clean Air Indoor Act, Act 8 of the special session of the legislature, goes into effect on July 21st, 2006. Our goal is to try to have regulations that would be in place just after the Act becomes effective. There are a couple of things in the rules and regulations that are implementing steps.

On page 1 of the draft we have defined the "Board" to mean the Arkansas State Board of Health; on page 2, the "Department" means the Department of Health and Human Services; on page 3, number (12) we define the "Person in Charge." This means "any person who has responsibility because of ownership, proprietorship, or management of a place that is open to or frequented by the public." A person in charge of a public place is used to refer to those additional instances where the person in charge is not an employer. The reason this definition has been placed within these regulations is that we needed an accountable party. In enforcing the regulations, we needed to define who that might be. On page 5, "An employer or person in charge violates this Rule if a person is allowed to smoke in an area where smoking is prohibited by this Rule." That is important because it creates an obligation on the part of businesses to enforce this law. On page 6, "Any owner or operator of an entity as defined in subsection (a)(2), (a)(3) or (a)(8) must certify to the Department that they are eligible for an exemption utilizing the exemption form." The purpose of this is to make sure that we are able to track those establishments that believe they are exempt. We are asking them to sign a form saying that "I believe that I meet this exemption," and send it to us. Also on page 6 there is a description of the sign that is required. The law requires that a bar or restaurant that exempts itself pursuant to the law must post a sign as defined by the Board of Health. The over 21 years of age requirement was added as a part of the sign. On page 7 we define an affirmative responsibility that the Department would be

engaged in a continuing program of education. Our focus is not as much on enforcement and penalties as it is on education and public awareness. This provision around public education makes it clear that we are going to continue that and expend resources and effort on behalf of the Department to support public education. Section VIII on page 7 is the "Violations and Penalties" provision and this is essentially taken from our current rules and regulations that the Board has used. One thing it does, in addition to our standard approach, is "The Board shall report any violation of these rules to the applicable licensing authority, if any. Any entity licensed by the Board or Department may have its license suspended or revoked for violations of this Rule." We are talking about the regulatory approach; the law itself has a criminal approach which would be enforced by local prosecuting attorneys.

We have consulted and worked with the Heart, Lung and Cancer Society, Children's Hospital and the Hospitality Association. We present today that these regulations be authorized to move forward for public comment with appropriate notices. The Board will then have an opportunity to receive those comments and take action on the rules and regulations. The rules and regulations will also go through a legislative review process; the Joint Public Health Committee, and the Legislative Council's Committee on rules will review them.

Dr. Halverson thanked Sen. Tracy Steele and the Board members for supporting the passage of this historic law.

Dr. Glen Davis reported that the only comments he had received from the Bill were favorable, and stated that the City of Little Rock has been in discussion with this for a long period of time. He stated that when this was looked at several years ago there were a lot of scenarios of exceptions that were trying to be worked out. One that has been brought to my attention is one of an institution that is multi-functional, and it is not really covered in this situation; whereby during the day this may be a family restaurant and in the evening it changes to a different type of venue with entertainment. There is nothing to cover a particular institution like that. Within the city, particularly Little Rock, and even the outlying areas, there are a lot of businesses like that. I know this has been brought up in public discussion, but I just wanted to bring it up here first to see if it had been considered or if there is some way that that can be looked at.

Dr. Halverson stated that while these regulations would be promulgated through the normal process, it is our intention to invite comments and questions from the public. We plan to have a frequently asked questions section on our web page so that our staff will be able to prepare responses as questions arise. Dr. Halverson called on Mr. Rick Hogan to answer the specific question about times.

Mr. Hogan stated the intent of Act 8 was that, if you apply for the exemption, the law states that it is "at all times." If you are exempt under Act 8 you cannot permit people to smoke at all times, whether they are employees, staff or patrons. That was the intent of the Act, and that's what we tried to convey in the regulations.

Dr. Davis stated that he thought that was where the problem is as the law says 21 years of age; you have to not allow anyone younger than 21 years of age in if you are going to allow smoking or be exempt from smoking. If that facility changes the nature of its business during the course of the day, it would be difficult to apply that uniformly. Mr. Hogan said that we would have to work through that in the compliance and education part of the law, but in the regulations before you today, and Act 8, we have done what we can do with respect to applying that exemption.

Dr. Halverson said he thought it was important to mention that the law itself has a provision which does not pre-empt local ordinance; in other words, if the local ordinance is more strict. If the City of Little Rock passed an ordinance that would be more stringent than this law, then that would be upheld. If a business wanted to extend its no smoking provision, it could do that throughout its campus. There are some businesses that say, "Not only do we not want smoking in our business, but we don't want it on our grounds."

Dr. Halverson stated that Dr. Thompson was the coordinator and lead person for this Bill and thanked him.

Dr. Thompson said that there was overwhelming support in the Senate and very strong support in the House, recognizing that there is negative health impact from secondhand smoke. I think this is a progressive step for the state. I think it will be a turning point over time.

Mr. Russ Sword made a motion to begin the administrative process. Dr. Page seconded the motion and the motion carried.

Appointment of Subcommittee for Regulations of Clean Indoor Air Act

President Konarski-Hart stated that this would be appointments of committees in general. Some Board members have cycled off the five standing committees. If any member currently on a committee wishes to remain on the committee, or any new member that has any interest in being on a committee, please let us know, and five new committees will be put together for 2006.

Proposed Revisions to the Rules and Regulations for the Childcare, Kindergarten through 12th Grade, and College/University Immunization Laws

Mr. Charles Beets, Chief, Immunization Section, requested permission to begin the administrative procedure process for the proposed revisions to the Rules and Regulations Pertaining for the Childcare, Kindergarten through 12th Grade and College/University. Mr. Beets summarized the proposed changes for the Board, which were included in the handout.

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Mr. Phelan made the motion to begin the administrative process. Mr. Tom Jones seconded the motion, and the motion carried.

Local Grant Trust Funding

Mr. Terry Brumbelow, Field Support Services Branch Chief, asked for the Board's approval for three grant awards regarding the Local Grant Trust Fund. The Subcommittee met in March of 2006, and again on April 12, 2006. He informed the Board of a change in the method by which the Jefferson County Health Unit will use their funding. The recommendations of the Subcommittee are to fund the following:

Searcy County	-\$70,000
Dallas County	\$28,850
Sebastian County	\$350,000

Dr. John Page made the motion to approve the recommendations of the Subcommittee for funding. Mr. Tom Jones seconded the motion, and the motion carried.

Appointment of Richard Hughes to Local Grant Trust Fund Committee

President Konarski-Hart acknowledged Mr. Richard Hughes as a new member of the Local Grant Trust Fund Committee.

President Konarski-Hart also acknowledged the reappointment of Mr. Alan Fortenberry to the State Board of Health.

Arkansas Drinking Water Advisory and Operator Licensing Committee

Mr. Martin Nutt, Training and Certification Officer, Engineering Section, stated this was his annual request for a new member appointment to the Arkansas Drinking Water Advisory and Operator Licensing Committee. Each member serves a six-year term and is a one-time thing. The Committee has only one nominee this year, and that is Scott Borman from the Washington/Benton Regional Public Water Authority. Mr. Nutt stated that Mr. Borman has a lot of good qualities and will make a good committee member.

Mr. Alan Fortenberry made the motion to accept the recommendation of Scott Borman. Dr. Page seconded the motion, and the motion carried.

Appeal of Findings of Committee of Plumbing Examiners

Mr. Robert Brech, Legal Counsel, stated that before the Board today is an appeal from the Committee of Plumbing Examiners; the case of Arkansas Department of Health and Human Services v. Dorian Thompson. A hearing was held October 7, 2005, but Mr. Thompson failed to appear at the hearing, and was charged with thirteen violations. Mr. Brech said that Mr. Thompson not only performed the plumbing work without a license,

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but that the work was very substandard, and, in fact, dangerous. Because the committee found that Mr. Thompson was guilty, a civil penalty of \$6,000.00 was assessed at that time. Mr. Thompson is here today to appeal that decision.

Mr. Thompson advised that he was here today to "let the Board see the way that it really is." He stated that he runs a handyman service to do carpentry and remodeling. He runs a full-time business during the day and works all night. He said the homeowner called the Health Department when Mr. Thompson sent him a bill. As far as the plumbing, Mr. Thompson stated he knows he is guilty. He reports that he is trying to get this behind him so he can move on.

Mr. Fortenberry asked Mr. Thompson if he disagreed with the testimony given at the hearing regarding the work that he had done. Mr. Thompson said he agreed with some of it, not all of it. Mr. Fortenberry asked Mr. Thompson if he knew it was against the law to do plumbing without a license and he said he did. Mr. Thompson was asked if he objected to the fine and the amount and he said he did.

Dr. Eddie Bryant asked Mr. Thompson what he thought a reasonable fine would be for these violations. Mr. Thompson reported that for a first time offender - \$500.00.

Mr. Brech reported that Mr. Thompson was offered a consent decree for \$1,500.00 but he did not fill it out and send it in, thereby refusing the offer.

Mr. Phelan asked if the Board could change the amount of the fine and Mr. Brech stated that it could. Mr. Don Phelan made the motion to fine Mr. Thompson \$3,000.00. Mr. Hughes seconded the motion, and the motion carried.

Mr. Brech stated that he would prepare an Order.

OLD BUSINESS

Proposed Rules and Regulations Pertaining to Onsite Wastewater, Designated Representatives and Installers

Mr. Usman Patel, Onsite Program Manager, stated that he had previously come before the Board with these proposed rules and regulations and had been given the approval to proceed with the administrative procedure. A public hearing was held which resulted in several comments and the regulations were revised accordingly. He stated that he was here again today requesting permission to proceed with the Administrative Procedure Act.

Mr. Fortenberry made the motion to begin the administrative process. Mr. Tom Jones seconded the motion and the motion carried.

**Proposed Revisions of Rules and Regulations Regarding the
Practice of Midwifery in Arkansas**

Dr. Richard Nugent, Family Health Branch Chief, stated that he is returning to the Board of Health for permission to resubmit these rules and regulations to another public hearing in order to complete the rule-making process for these changes. The necessity for resubmission arose for procedural reasons and not for any lack of clarification with the prior hearing or the prior legislative review or any disagreements which have arisen with the midwives since then. Dr. Nugent stated that the procedural problem was that he was unable to process and follow that rule-making process timely within those rules. There have been no substantive changes in these rules since that earlier process.

Mr. Phelan made a motion to resubmit the revised rules and regulations. Mr. Tom Jones seconded the motion and the motion carried.

OTHER BUSINESS

Appointment of Dr. Dennis Yelvington as Monroe County Health Officer

Mr. Rick Hogan stated that he was requesting approval of the appointment of Dr. Dennis Yelvington as the Monroe County Health Officer.

Dr. Page made the motion to approve the appointment of Dr. Yelvington. Dr. McKiever seconded the motion and the motion carried.

**Update on Public Health Operations
Overview of Injuries in Arkansas**

Dr. Mary Aiken, M.D., MPH, Associate Professor of Pediatrics, UA College of Medicine, presented an overview of injuries in Arkansas. She stated that her interest is in the prevention of injuries in children. Motor vehicle crashes are the leading cause of death in young people and result in 42,000 deaths every year in this country. CDC reports that significant economic burdens from the 50 million injuries that occur each year, 150,000 deaths, result in about \$406 billion in costs in a single year in terms of medical costs and loss of productivity. From motor vehicle crashes in Arkansas, we are sustaining about \$2 million in costs a year. You are more likely to be in a car crash if you are traveling on a rural road, and you are more likely to have delays in your medical care, so you are more likely to die.

In Arkansas, approximately 60% of all deaths of children are related to injury, the largest block being motor vehicle crashes. Restraints are extremely effective. We know that seatbelts and car seats work 50 to 70% of the time in reducing your likelihood of dying if you are in a car crash. In Arkansas our injury rates are high because our seatbelt use is about 15% lower than the rest of the country.

Dr. McKiever voiced some concerns about the trauma system. He stated that it took him 5 hours to get a patient with a head injury transferred to a hospital. "We just can't get people to take patients. It is just a matter of time before we have somebody die in the ER because we can't get a neurosurgeon."

Dr. Aiken stated that we don't have a comprehensive trauma system in the state. The Trauma Commission is beginning to consider how we might get the resources to set up a trauma system.

Dr. Halverson added that he echoed Dr. McKiever's concern. This is one of the major areas of concern that he has had as it relates to our overall injury issue in Arkansas. Dr. Halverson said he recently met with the Arkansas Hospital Association and plans to meet with the Medical Society. There was discussion by the Trauma Commission with trying to lay out a plan over the next three years, and Dr. Halverson stated that he had asked them to expedite that, to move it forward, to have it be a front-burner issue this year. I believe that we have a looming crisis in our trauma system. I also think we have enormous opportunities in our trauma and injury areas in our state. This Board, I hope, will hear more about and will take a strong leadership position much the same way they have other health issues because this is so important to our state. We can actually do something about this relatively quickly and it will have a huge impact.

Dr. Thompson asked how many states around us have a primary seatbelt law. Dr. Aiken stated that Mississippi recently passed a law; all of the states surrounding Arkansas have a primary law.

Dr. Thompson said that we are the only state where you can get a ticket if you are pulled over for something else and you're not wearing your seatbelt, but a police person cannot pull you over because you're not wearing a seatbelt. This Board, as the governing board on health protection and on public health, rarely thinks about health care financing. Dr. Thompson stated that 25% of the 19 to 64 year olds in this state have no health insurance coverage whatsoever. We don't have a trauma center or neurosurgical availability because it is not attractive for those providers to provide free care. We've got to put the financing piece, the prevention piece and the treatment piece all on the table at the same time. We need to not only think about how we can pump resources in to address the health problem, but we also have to capture the financial issue. If we put a primary seatbelt law in place, what could we do to reduce the number of accidents and injuries that are adding uncompensated care costs to our health care system?

Dr. Aiken stated that a primary seatbelt law tends to increase the use of seatbelts by 15% when it is enacted. CDC estimates that we would save 235 lives a year in the state and several thousand hospitalizations. So, the savings are potentially enormous for this one legislative activity.

Dr. Sneed asked if there were an injured Arkansan who had to go to Springfield or Memphis, does Arkansas reimburse these facilities for health care.

Dr. Thompson said that wherever you send that patient, they don't get paid. Memphis gets a very small amount.

Dr. Halverson reported that Arkansas is one of the states that leads the country in morbidity and mortality from fire. He asked Dr. Aiken to comment just briefly on that.

Dr. Aiken stated that the two groups that are at the highest risk for death due to fire are young children and the elderly. Because of the rural nature of the state, construction of the houses, a lot of wood houses that are isolated, and also because of the use of alternative forms of heating, we do have higher rates of fires in the state and higher rates of fire death because we don't have as many smoke alarms. Inappropriate disposal of cigarettes is associated with residential fires. So, we might be killing a lot of birds with one stone if we can reduce our rates of smoking in the state.

Mr. Russ Sword stated that he sits on the Hospital Association Board and wanted to applaud Dr. Halverson for his leadership in trying to get a trauma system implemented. When there is a patient that needs to be transferred, the emergency room doctor responsible for taking care of the patient is spending hours upon hours calling all over the world to transfer the patient. If we have a trauma system, there ought to be one call and if our trauma center is not able to accept a patient, it should be their responsibility to find a center that will accept the patient and then call back to our ER and say, "You need to contact this medical center with specific patient information." Mr. Sword stated that he didn't know if a motion was in order to get this on the next session of the legislature, but if it is, he so moves. Dr. McKiever seconded the motion and the motion carried.

Update on Planning for Pandemic Flu

Mr. Steve Boedigheimer, MBA, gave a quick update on Planning for Pandemic Flu. In January there was a lot of national and international interest in preparing for a pandemic. The governor was not waiting for a national movement to sweep over us and on December 22, 2005 he issued a charge to state agencies and asked John Selig and Dr. Halverson to lead an effort in preparing a pandemic flu response plan. We have been working with the CDC in applying for some of the national funds. Arkansas is eligible for about a million dollars and we have submitted our application for that and are looking to get that money.

Update on Public Health Laboratory

Dr. Glen Baker, Director of the Arkansas Public Health Laboratory, reported that CLIA has authorized our laboratory to perform all the tests they were doing in the past, and some new tests that have been instituted. There was a press release from the regional CLIA office in Dallas congratulating DOH on the progress that has been made in the laboratory. CLIA has never done that before. I think that is a one time event and I was very pleased that they saw fit to do so and recognized the efforts that were made by the staff. We want to make certain that this laboratory is recognized by everyone in the

State of Arkansas as a quality operation and one that is responsive to our customers. CLIA will be back in two years to review the laboratory. The new facility is moving along in a timely manner and hopefully we can move in by late summer if not early fall, if the equipment comes in as scheduled.

PRESIDENT'S REPORT

President Konarski-Hart stated that she had nothing further to add.

DIRECTOR'S REPORT

Dr. Halverson stated that he just had a couple of quick comments. He said he had commissioned a small panel, led by Dr. Bates, that will be examining our Newborn Screening efforts. We have not really changed newborn screening in our state for many years and I think we are now facing the fact that technology is currently available that will allow us to more effectively screen for a number of congenital issues and concerns, and we want to be smart about how we do that. Dr. Bates will commission a panel of physicians and other experts who will advise us as to the potential for expansion. One of the issues that we will struggle with, and I hope this group will embrace, is that there are congenital abnormalities that we can screen for, for which there is currently no treatment. In fact, our technology sort of outstripped our ability in some cases. We want to look carefully at how far we go in terms of that screening and there will also be the issue of "how do we pay for that". There would be additional equipment requirements and so forth for us to be able to do that. In the new laboratory we will have both the space and the people who are able to do that.

I would also mention to you that I have also commissioned a panel of physicians who will be advising me on the antiviral purchase. We are assembling infectious disease experts and others to help look at our antiviral purchase and to make sure that we are making the best use of the resources that have been allocated to us.

I just want to mention to you a couple of the building projects that are ongoing. One is the laboratory, and we will make sure the Board is invited to a special pre-opening of this beautiful building. As soon as we get more firm plans on when that will be, we will let you know, but it will probably be some time in late summer. I also want to remind you that we are completing our emergency operations center. This new EOC will be located in the Markham Street building in the basement level. We are now finalizing the negotiations on the installation of audio-visual equipment that will link us with state and federal assets as it relates to coordination of our emergency response responsibilities. We anticipate being able to have an open house for the Board some time this summer.

Dr. Halverson stated that that concluded his report and would be happy to answer any questions.

Dr. Joe Thompson stated that this Board, particularly with the Health Division now being a part of the Department of Health and Human Services, is more important now than it

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has been in the past in being the voice and the harbinger of actions the state should take. We need your help and your voice in taking steps to protect the citizens of the state.

Mr. Phelan made a motion to adjourn. Mr. Tom Jones seconded the motion and the motion carried.

The meeting was adjourned at 11:45 a.m.

Respectfully submitted,

Paul K. Halverson, DrPH
Director DOH