

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

**July 27, 2006**

**MEMBERS PRESENT**

Karen Konarski-Hart, D.C., President Elect  
Perry Amerine, O.D.  
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  
Anthony Hui, M.D.  
Thomas Jones  
Lynda Lehing  
John Page, P.D.  
Don Phelan  
Jack Porter, D.D.S.  
Robert Sanders, D.O.  
Jane Sneed, M.D.  
Russ Sword  
Dr. Joseph W. Thompson

**GUESTS PRESENT**

Adm. John Agwunobi, Asst. Sec. for Health  
Joyce Dees, Governor's Office  
Nathan George, State Representative  
Dr. Joe Bates, DOH  
Steve Boedigheimer, DOH  
Rick Hogan, Legal Counsel  
Reggie Rogers, Legal Counsel  
Robert Brech, Legal Counsel  
Charles McGrew, DOH  
Suzanne McCarthy, ACHI  
Dr. Jennifer Dillaha, DOH  
Randy Lee, DOH  
John Senner, DOH  
David Quattlebaum, DOH  
David Taylor, EMS/EMT  
Larry New, EMS/EMT  
Jerry Duncan, DOH  
Norajean Miles, EMS/EMT  
Jane Gaskill, Health Facility Services  
Laura Moody, Health Facility Services  
Doug Gordon, Health Facility Services  
Ed Carson, DOH  
Catherine Hall-Tapp, DOH  
Harold Seifert, DOH  
Ann Wright, DOH  
Ed Barham, DOH  
Terry Paul, DOH  
Nell Smith, Arkansas Dem.-Gazette  
Andrea DeMillo, Associated Press  
Nancy Cox, Legal  
Andrea Woods, AR Soc. For Human  
Resources Management

**MEMBERS ABSENT (excused)**

Peggy Walker  
Timothy R. Webb, M.D.

Dr. Susan Jones  
Dr. William McKiever

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

The July Quarterly Meeting of the Arkansas State Board of Health was held Thursday, July 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 April 27, 2006 Quarterly Meeting. Mr. Jim Davis made the motion to approve the minutes. Mr. Don Phelan seconded the motion, and the minutes were approved as presented.

President Konarski-Hart turned the meeting over to Dr. Paul Halverson. He reported a change in the order of the agenda, i.e., item 2. "Proposed Revisions of the Regulations Governing the Practice of Lay Midwifery," and item V.2. "Old Business – Proposed Adoption of Rules and Regulations Pertaining to Onsite Wastewater, Designated Representatives and Installers," are being pulled from the agenda today. Because of the unexpected death of Lt. Gov. Rockefeller, the public health committee who reviews these proposed regulations was unable to meet. Those proposed regulations will be reviewed at a later time and we will see them at the next quarterly meeting.

Dr. Halverson stated that it was a pleasure to have present today the Assistant Secretary of Health for the U.S. Department of Health and Human Services, Adm. John Agwunobi. Adm. Agwunobi is here for two purposes; (1) a presentation at Grand Rounds concerning second-hand smoke and the scientific evidence that supports the second-hand smoke regulation; and (2) to talk about our pandemic planning.

Dr. Halverson called on Mr. Robert Brech to review the legal procedures as they relate to the proposed rules and regulations of the Arkansas Clean Indoor Air Act of 2006.

Mr. Brech advised that the Clean Indoor Air Act became effective on July 21<sup>st</sup>, which was last Friday. He stated that public comments were received, all steps of the Administrative Procedure Act had been followed, and the proposed rules and regulations reviewed by the legislative committees. The last leg is for the Board to pass this regulation today. It will then be presented to the Governor for his approval and filed with the Secretary of State's Office and the State Library. Ten days after that the law will go into effect. Therefore, we are looking at an effective date of sometime between August 7<sup>th</sup> and 15<sup>th</sup>.

Mr. Russ Sword made a motion to adopt the proposed regulations. Dr. Page seconded the motion. President Konarski-Hart asked if there was any discussion.

Dr. Fritchman stated that he would like to point out a few things. He stated that his animal hospital has been smoke free for 23 years, his personal vehicle has been smoke free for 35 years, and his home has been smoke free for 25 years. No government

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agency; no law made him do that. Smoking is an aesthetically offensive habit to endure. He stated that at 63 years of age he has managed to avoid second-hand smoke. He said he did not feel that the government has any purpose in telling him how to micromanage his life when it comes to second-hand smoke.

He stated that he was bothered by the question of who determines that death is from second-hand smoke. It is not found in death certificates, and he stated that he doubted if you would find it in physicians' records. In researching, he stated that he found that the research papers tend to be based on supposition, extrapolation, interpolation and guesstimation. The thing that becomes interesting is that you find there is a World Health Organization study which says second-hand smoke is not correlated to these diseases. There is a 39 year study from UCLA, published in the British Journal of Medicine that, after 39 years and 35,000 subjects, finds there is no correlation to second-hand smoke and disease.

Dr. Fritchman asked why is it that people who are exposed to the same amount of smoke, second-hand smoke, first-hand smoke, die at the age of 40 and others live into their eighties or nineties? Are there genes, or are there no genes? I think that is an area that should be described. There are enough questions that are unanswered to make me wonder why we need legislation to ban second-hand smoke, other than the fact that it is offensive.

Dr. Fritchman quoted Ben Franklin as saying that "when a government of free people continues to enact laws to protect those free people, the people are neither free nor protected". I think this is the case now.

Dr. Fritchman stated that he truly believed that it is wrong to micromanage lives and stated that he does not believe there is enough scientific evidence to warrant this kind of action.

Dr. Fritchman told the Board they would not have to endure anymore speeches, that today was his last day on the Board of Health. He stated that it was not over this law; but another law and another Supreme Court ruling. The State Legislature made all of the Board members employees of the state last year. May 30<sup>th</sup> the Supreme Court ruled that civil servants, i.e., government employees do not have First Amendment rights of free speech. He stated that in an open forum, when the press is present, it cuts the debate on any given subject; if you don't agree with it you have to be very careful what you say. If I can't speak in this way, and feel free to do so, I see no need to further serve the Board and therefore will resign my position.

Dr. Joe Thompson asked that Dr. Fritchman reconsider his decision to resign from the Board. He stated that diversity of opinion is what makes the Board of Health. Dr. Thompson also disagreed with Dr. Fritchman's interpretation of the research. He stated that there are studies that overwhelmingly suggest that second-hand tobacco smoke exposure is harmful. This law and these regulations don't address the smokers

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themselves. They are free to smoke as long as they don't endanger somebody else. This Board's responsibility is for the public's health, to protect people from other harms.

Mr. Alan Fortenberry added that this Board did not make the law, this Board is charged with the responsibility of regulating the law. I too wish you would reconsider resigning. You have been a valuable part of the Board and the reasons that you give aren't valid enough to justify your resigning. If you get arrested for freedom of speech, I'll be the first one to come and bail you out.

Mr. Jim Davis also added that the Board does not make laws, the legislature is in place for law-making. If anyone is dissatisfied with this, they should go back to them.

President Konarski-Hart stated that it had been moved and seconded to adopt the proposed Clean Indoor Air Act rules and regulations and took a voice vote. All Board members were in favor with the exception of Dr. Fritchman who voted against the adoption. The motion carried.

#### **Appointment to State Committee of Plumbing Examiners**

Mr. Jerry Duncan, Administrator, Plumbing & Natural Gas Section, DOH, requested the Board to consider the re-appointment of Lynn Bennett as the master plumber representative and Russell Anderson as the consumer representative to the State Committee of Plumbing Examiners.

Dr. Perry Amerine made the motion to approve the appointment. Dr. Sanders seconded the motion, and the motion carried.

#### **Proposed Revisions to 2006 Hospital Discharge Data Guide**

Mr. Ed Carson, Section Chief, Hospital Discharge section, reported that the Center for Health Statistics is required by law to collect hospital discharge data and requested the Board's approval of the proposed revisions to the 2006 Hospital Discharge Data Guide. These revisions are necessary to comply with new laws to update data submission, timing and methods and to correct references to this agency.

Mr. Fortenberry made the motion to adopt the proposed revisions. Dr. Page seconded the motion, and the motion carried.

#### **Proposed Revisions to the Rules and Regulations Pertaining to Public Water Systems**

Mr. Harold Seifert, Director, Engineering Section, reported that he was here today for his biennial appearance to get new signature dates on the rules and regulations so that federal regulations adopted in the past six months are adopted by reference by the Public Water System regulations. Mr. Seifert stated that he was requesting permission to begin the administrative procedure process to adopt these regulations.

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

**Proposed Revisions to the Rules and Regulations for  
Hospice in Arkansas**

Laura Moody, Program Manager for CLIA, stated that she was before the Board today asking for permission to begin the administrative procedure process for the proposed revisions to the rules and regulations for hospice. She stated that the changes are significant based on the current rules that have been in place since 1983. We asked for permission to go forward in 2005 but the hospice industry personnel that had been working with us on the regulations had comments to make on their own revisions, so we pulled back. We are again asking for permission to go forward.

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

**Proposed Findings of Fact, Conclusions of Law and Order**

Mr. Reginald Rogers, Legal Counsel, stated there are three proposed findings of fact on public water systems. They are Casa Water Department, Plainview Water Department and Pangburn Waterworks. Mr. Rogers stated that these systems appeared before a Hearings Subcommittee, and their recommendations are included in the proposed findings of fact.

Mr. Fortenberry made the motion to accept the recommendations of the Hearing Subcommittee on all three of the proposed findings. Dr. Amerine seconded the motion, and the motion carried.

**Comments of Admiral John O. Agwunobi, MD, MBA, MPH,  
Assistant Secretary of Health**

Adm. Agwunobi stated that he had traveled the nation and visited many states talking about pandemic influenza preparedness and that very few states have come as far as Arkansas. The federal government has committed and Congress has funded the strategy that 300 million courses of vaccine against the pandemic be delivered within six months of a pandemic being declared.

He stated that the strategy of stockpiling anti-virals involves the notion of a federal stockpile that Arkansas has a share of, it is paid for completely with federal dollars. The ultimate goal is having enough anti-virals to treat 25% of the population, roughly the number of those expected to become sick. Of 81 million courses or 25%, 50 million courses will be paid for by the federal government and a per capita share of that 50 million courses will have Arkansas' name on it. Once it is fully acquired, Arkansas' share will sit in that federal stockpile should it be needed.

Adm. Agwunobi applauded the work the Division of Health has done on clean indoor air. He stated that the surgeon general recently released the Surgeon General's Report on Second-hand Smoke and Involuntary Exposure to Second-hand Smoke. That report contains a summary of 50 years of research that shows what everyone already knows, which is that secondary exposure to tobacco smoke causes all of the diseases that cigarette smoking causes, such as lung cancer and heart disease. The science has become clear in an area that perhaps isn't clear to everyone, and that is that it also has a huge effect on second-hand exposure. If you are involuntarily exposed to second-hand smoke, as a non-smoker, you are at risk of a heart attack, you are at risk of asthma, you are at risk of Sudden Infant Death Syndrome if you are an infant, you are at risk of acute infections, and you are at risk of a number of conditions. Even if that exposure is transient and brief, a single exposure to tobacco smoke is not safe. The report urges everyone to avoid being exposed to second-hand smoke even briefly. The report closes by saying that second-hand smoke has been shown to be present in buildings that share air-conditioning systems even when smoking is occurring in designated areas. The Surgeon General's Report comes to the conclusion that there is no level of second-hand smoke exposure that is completely safe.

Dr. Halverson thanked Adm. Agwunobi for coming today and stated that he represents the best of our federal service.

Mr. Charles McGrew stated that he would like to acknowledge the presence of State Representative Nathan George, a sponsor of the bill and instrumental in the passage of the Clean Indoor Air Act.

Representative George told the Board he was very proud of this Bill. He said when this Bill first came through the House, he worked against it and voted against it because he believed it was an infringement upon personal and business rights. As a school teacher, a coach and a parent, he had to face the children and answer a lot of tough questions. He realized that in his role not only as a parent but as a professional, he needed to set a different example. He stated that after going into small service stations and seeing pregnant ladies in those service stations that were smoke filled, he started doing further research and being more involved in reading reports from the Surgeon General. He stated that in his heart he fully believes the Board has taken the right step. I'm glad I did a 180 degree turn. I felt very proud to face the children again in my class, face my athletes, and to face my daughter who made it harder on me than anyone. I'm very proud of the work that the Board does and if there is ever any way I can be of service to you, don't hesitate to call me.

**Request for Approval of Mandatory Placement of  
Automatic External Defibrillators**

Mr. David Taylor, Section Chief, EMS and Trauma Systems, came before the Board to request approval for implementation of automatic external defibrillators on all licensed basic and intermediate ambulances in the State of Arkansas. Studies have shown an increase in survivability when patients receive CPR plus early defibrillation within the first 3 to 5 minutes of cardiac arrest. AEDs are not much bigger than a page of paper, some are even smaller. EMTs are currently mandated to obtain training regarding AEDs, with refresher training every two years.

Mr. Fortenberry made the motion that the mandatory placement of automatic external defibrillators on all licensed basic and intermediate ambulances be approved. Dr. Sneed seconded the motion, and the motion carried.

Dr. Amerine asked to make a follow-up comment: He stated that the Board addresses a lot of critical issues which can create a little anxiety. For that reason, he recommended that the Board secure an AED for the Board Room and also access to 911.

Dr. Halverson stated that there is a phone in the room and that it could be arranged to have an AED for the Board Room.

Don Phelan seconded the request made by Dr. Amerine. The Board voted and the request carried.

**Addition of Adult and Pediatric End-tidal CO2 Monitoring  
Devices to Advanced Level Mandatory Equipment Lists**

Mr. Taylor stated that the EMS Advisory Council, Medical Subcommittee, strongly recommends the mandatory placement of End-tidal CO2 detectors on all licensed advanced life support ambulance services. The End-tidal CO2 detectors will reduce the risk of unrecognized tube misplacement or displacement. Providers should use clinical assessment plus a device such as an exhaled CO2 detector to evaluate tube location. The CO2 makes it easy for paramedics to access the airway.

Dr. Sneed made the motion that the End-tidal CO2 Monitoring be mandatory on all licensed basic and intermediate ambulances be approved. Dr. Amerine seconded the motion, and the motion carried.

**Remove Activated Charcoal from the Basic and Intermediate  
Ambulance Mandatory Equipment List**

The EMS Medical Subcommittee strongly recommended that medical directors of EMS services have the option of carrying activated charcoal. EMS currently mandates

activated charcoal on ambulances. There were concerns by pre-hospital administration, depending on the types of poisoning, that activated charcoal not be given to people with an obstruction of the intestines or if a person had swallowed a corrosive agent. Activated charcoal can be purchased over the counter. EMTs will continue to receive training regarding the administration of activated charcoal, the signs and symptoms of activated charcoal. We are recommending that activated charcoal be removed from the mandatory listing.

After some discussion, Mr. Fortenberry made the motion to approve this request. Mr. Sword seconded the motion and the motion carried.

**Request for Approval to Move Calcium Channel Blockers from  
Mandatory Medication List to Optional Medication List**

Mr. Taylor stated that the EMS Medical Subcommittee has recommended that Calcium Channel Blockers, currently on the mandatory medication list for advanced care providers, paramedic services and air services, be moved from the mandatory list to an optional list. Calcium Channel Blockers are utilized to treat high blood pressure, angina and abnormal heart rhythms. They can also be used for a heart attack, particularly among patients who cannot tolerate beta-blocker agents, or have atrial fibrillation or require treatment of angina. If this request is approved, it will provide an avenue for paramedic ambulance service medical directors to utilize CCBs in a pre-hospital setting or wait until the patient has been evaluated in the emergency room. We are requesting that these be removed from mandatory to optional.

Mr. Fortenberry made the motion to approve this request. Dr. Page seconded the motion and the motion carried.

**OLD BUSINESS**

**Proposed Revisions to the Rules and Regulations Pertaining to  
Septic Tank Cleaners**

Mr. Terry Paul, Onsite Wastewater Section, requested the Board's approval of the proposed rules and regulations. He stated that these revisions basically were made to align with the federal regulations.

Mr. Phelan made the motion to approve the revisions. Mr. Tom Jones seconded the motion, and the motion carried.

## **OTHER BUSINESS**

### **Update on James Hanks' Case**

Mr. Rick Hogan, Legal counsel, asked that Dr. Fritchman reconsider his decision to resign from the Board. He also reported that the Hanks' case was over. The Supreme Court fully endorsed the Board's decision to not give Mr. Hanks a license to be an EMT. Legal is in the process of collecting the money as a result of the expense in defending this matter. Mr. Hogan stated that he would continue to vigorously represent the Board in their First Amendment Rights or in any other matter.

Dr. Fritchman thanked Mr. Hogan and advised that his resignation had nothing to do with what we have talked about today.

President Konarski-Hart stated that she appreciated the legal team and the Board members involved in the Hanks case.

Mr. Jim Davis asked to make a brief comment. He stated that he attended all of the hearings relating to the regulatory rules, and attended the session when the law was passed, and he stated that he wanted to personally compliment Rick Hogan and his staff. All the hearings I attended, every person who came had an opportunity to express everything that was on their mind, they were never shorted any time, and recognizing the difference between legislation and regulation, I do want to compliment the legal staff on an extraordinarily well-handled program for a near impossible task.

## **PRESIDENT'S REPORT**

President Konarski-Hart stated that she would like to thank those in attendance today and reported that the next meeting would be the retreat in October.

## **DIRECTOR'S REPORT**

Dr. Halverson stated that he had would like to give a quick update on operations of the Division of Health. Mr. Charles McGrew has recently been appointed to serve as our Deputy Director and Chief Operating Officer. He has been with the agency for over 36 years.

Dr. Halverson introduced Mr. Michael Wolfe, who is formerly the Chief Executive Officer of United Healthcare. He will take on the responsibility as Deputy Director working very closely with myself, Mr. McGrew and Dr. Bates. Particularly we will be focused on quality improvement and looking specifically for ways we can improve the efficiency and effectiveness of our clinical operations with emphasis on customer service.

We will begin hosting County Health Officer orientation meetings this month in conjunction with our immunization grant from the CDC. We are bringing the County Health Officers together for the purpose of orienting them to public health, particularly

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focused on pandemic and their role in pandemic planning and emergency preparedness. These are important individuals that serve in a public health capacity in our counties, and this will be the first time we have brought them together.

Just as a FYI, we are now working closely with the HVAC Board and the Committee of Plumbing Examiners. We have not always paid as much attention to those Boards as we should have. I now understand that there are some issues related to the support of those boards and we are working through those and we will keep you informed as we move forward.

I met with the Governor's trauma committee and expressed to them your strong support in moving forward with a trauma system. I will be working with them in putting together a legislative package that could create a much more effective trauma system for our state. We have regulations in place but we have no trauma centers and that is due in large part to financial constraints as well as some operational issues we are trying to address.

We are nearing the close of the construction of our new 80,000 square foot laboratory building. We hope to have an open house and public dedication in October. We will be in touch as soon as that date is set. We are also coming close to the completion of our emergency operations center in the basement of the Markham Street Building. We may be in a position to have an open house and dedication on that sometime in September. We are also doing a small project which is part of the Emergency Operations Center. It is an EOC briefing room which will be a combination emergency operations center and conference room housed on the Fifth Floor of the Markham Street Building connected by electronics, to be able to provide electronic connectivity to our Emergency Operations Center and used for briefings in the event of an emergency.

We will be sending you information relative to the logistics of the meeting in October, which will be held at the Red Apple Inn.

With no further business, the meeting was adjourned at 11:35 a.m.

Respectfully submitted,

Paul K. Halverson, DrPH  
Director DOH