



**Minutes of the State Board of Health  
June 10, 2009**

Cherberg Building, Capitol Campus, 304 15th Ave SW, Olympia, WA 98501

**SBOH members present:**

Treuman Katz, Chair  
The Honorable John Austin, PhD  
Keith Higman, Vice Chair  
Frankie T. Manning, MN, RN  
Patricia Ortiz, MD

Mel Tonasket  
Mary Selecky  
Karen VanDusen  
Diana T. Yu, MD, MSPH

**SBOH members absent:**

The Honorable Donna Wright

**State Board of Health Staff present:**

Craig McLaughlin, Executive Director  
Desiree Robinson, Executive Assistant  
Heather Boe, Communications Consultant  
Tamara Fulwyler, Outreach Coordinator

Ned Therien, Health Policy Analyst  
Tara Wolff, Health Policy Analyst  
Melissa Burke-Cain, Assistant Attorney General

**Guests and Other Participants:**

Jennifer Aspelund, Citizen  
Cheryl Christian, Labor & Industries  
Denise Clifford, Department of Health  
Marisa D'Angeli, Department of Health  
Michelle Davis, Department of Health  
Derrick Dennis, Department of Health  
Ed Fox, Squaxin Island Tribe  
Denise Frisino, Teacher  
James Green, Citizen  
Peggy Johnson, Department of Health  
Nancy Napolilli, Department of Health

Kathy O'Toole, Washington Education  
Association  
Thelma Simon, Clean Air Now CleElum  
Erik Smith, Your Healthcare Today  
Kyle Sturgill-Simon, Citizen  
Eileen Sullivan, Roche  
Sandi Swarthout, Puget Sound Schools  
Coalition  
Tami Thompson, Department of Health  
Evan Ujiiye, Northshore School District  
Jill Van Glubt, Washington Education  
Association

Treuman Katz, SBOH Chair, called the public meeting to order at 9:39 a.m. and read from a prepared statement (on file).

**1. APPROVAL OF AGENDA**

*By general consent, approved June 10, 2009 agenda*

**2. ADOPTION OF MARCH 11, 2009 MEETING MINUTES**

*Motion: Approve the March 11, 2009 minutes*

*Motion/Second: Austin/Manning. Approved unanimously*

### 3. SBOH ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Craig McLaughlin, SBOH Executive Director thanked staff for their extra work and flexibility during his absence. He reported that efforts to cut Board costs are on track. He directed the Board's attention to the 2009-11 operating budget for the department and briefly explained its impact on the board. In the next biennium, the Board will need to make annual reductions of \$104,000 for staff support of the health impact review process and \$25,000 in administrative reductions. Chair Katz asked how budget reductions would affect the Board's strategic plan. Mr. McLaughlin said he would forward suggestions during the next round of planning which begins in July. He announced that a lawsuit concerning opioid guidelines in which he was a co-defendant has been dismissed. He reported that Board Member Patricia Ortiz applied for a second term. The Governor has not named a replacement for Chair Katz yet, so he will continue to serve. He announced that the October board meeting date and location would be moved to the 14<sup>th</sup> in Olympia instead of the 7<sup>th</sup> in Yakima to reduce expenses. He reported contact from the National Association of Local Boards of Health (NALBOH) about encouraging the establishment of a State Association of Local Boards of Health (SALBOH) for Washington. Board staff will continue exploring this. He mentioned progress on developing a pandemic flu contingency plan and recognized staff efforts on it. He also reported that he has accepted the position of chair of a Prevention Advisory Group supported by the Mental Health Transformation Grant.

### 4. DEPARTMENT OF HEALTH UPDATE

Bill White, Deputy Secretary of Health and SBOH Member, briefly reported on the department's response to a pertussis outbreak. He said the department has evaluated applications for stimulus funds for drinking water system repairs. The department identified a much greater need than could be covered by the federal funds. He mentioned that West Nile virus has been detected the earliest ever this year in a mosquito pool. He said if it follows the pattern of other states, this may mean it will be Washington's first bad year. He reported that the swine flu (H1N1) outbreak significantly impacted the department and local health. He said that public health reached the limit of its capacity during the first three weeks of this outbreak.

The State's biennial budget reductions reflect what has been going on with local governments for the past several years, he said, and the department's budget is reduced by about \$100 million for 2009-2011. He talked about specific state budget reductions and spoke of resulting layoffs. He said that the tobacco program cuts are of particular concern because the tobacco account reduction essentially eliminates the prevention account for work continuing after this biennium. He said Secretary Selecky considers it important to get that money returned to the account in the future. Federal funding reductions for the department will probably follow in a year or two.

Chair Katz asked Deputy Secretary White and Members Ortiz and Yu, as physicians, what they foresee will be the impact of the state budget reductions. He expressed particular concern about cuts in the Health. Deputy Secretary White said the Department has attempted to make cuts that have the least impact on the public health system's core capacity. Dr. Ortiz said that she is seeing more people in her clinic who have no jobs, no health insurance, avoid preventive care, and will end up using emergency services. Diana Yu, SBOH Member, said funding cuts in Thurston County have resulted in loss of WIC clinics and family planning clinics. At the same time, the county has had to deal with influenza cases. She said this is a difficult transition period. Fewer

people will have access to vaccines and there could be less compliance with the Board's requirements for school entry. The bottom line is that public health system will always respond to address emergencies. Chair Katz said he is concerned that people who no longer have insurance will postpone care and that will make their conditions worse.

Dr. Yu said the 20 experienced staff members her local health agency had to lay off in the past few months would be hard to replace if funding is restored. She said that the public health system needs a source of sustainable funding. Keith Higman, SBOH Vice Chair, said local health agencies are suffering reductions in all funding sources. His agency has about a third less funding than two years ago. He said it is important to find ways to communicate the effectiveness of public health services. He said it is becoming harder to maintain prevention programs. He is losing his optimism. Frankie Manning, SBOH Member, asked how expected federal cuts would impact public health programs. Deputy Secretary White responded that it is too early to tell, but federal cuts likely would have a major impact.

**5. NOTIFICATION OF EMERGENCY RULE MAKING—PROVISIONAL NOTIFIABLE CONDITIONS FOR H1N1 INFLUENZA A, CHAPTER 246-101 WAC**

Dr. Yu briefly explained the notifiable conditions rules. Tara Wolff, SBOH Staff, explained that the department has authority to adopt emergency rules to add a disease to the notifiable conditions reporting list. She introduced department personnel Dr. Marisa D'Angeli, Epidemiology Response Coordinator, in the room; and Drs. Maxine Hayes, State Health Officer, and Tony Marfin, State Epidemiologist for Communicable Disease, on the phone. Dr. Hayes said provisionally adding the novel H1N1 influenza A virus to the list of diseases hospitals report would help identify cases. This information could help public health develop intervention strategies and identify groups at special risk. The department would also like hospitals and health care providers to identify infections in health care workers and pregnant women voluntarily. She said the Washington State Medical Association and Hospital Association are supportive of this rule change. Dr. Yu confirmed that the emergency rule would focus on suspected and confirmed hospitalized cases of novel Influenza A (H1N1) virus and fatal cases. Dr. Marfin added that the department tested more than 1,600 specimens in the first four weeks of the outbreak and determined that cases of H1N1 influenza A were already present in the state at the time CDC first reported the outbreak. The rate of hospitalized cases of H1N1 (about 8%) is higher than typically expected with influenza. There is indication that cases admitted to hospitals appear to be a representative portion of the population and could be tested to gauge community prevalence.

Member Higman asked why the department would use an emergency rule making process instead of other rule making mechanisms, and whether in a year we might be looking at another influenza outbreak strain. Dr. Hayes responded that we do not know how virulent this virus will turn out to be when the flu season starts in the fall. She said that emergency rule making is needed because regular rule making is too slow. Dr. Yu asked for clarification regarding why the state should not require that all cases of hospitalized influenza be reportable. Dr. Marfin responded that the total number of influenza cases hospitalized in Washington per year is about 2-3% of 200,000 national cases and that would present a large reporting burden. Once rapid assays have been developed in the next four to five months, it will be easier for hospitals to identify confirmed cases. He said adding all strains of novel influenza to required reporting is being considered for permanent rule making.

*The Board took a break at 10:57 a.m. and reconvened at 11:10 a.m.*

#### **6. BRIEFING ON STATUS OF CLANDESTINE DRUG LAB RULE MAKING, CHAPTER 246-205 WAC**

Karen VanDusen, SBOH Member, explained that during the 2006 session the Legislature required the department to adopt rules about certification of third party samplers of clandestine drug lab (CDL) sites. During the 2009 session, it eliminated that requirement. It also eliminated funding in 2009-2011 for the Department's CDL program. Ned Therien, SBOH Staff, reviewed materials behind Tab 6. Nancy Napolilli, Director of the DOH Office of Environmental Health and Safety, described the status of the Clandestine Drug Laboratory Program given staff reductions required by the state budget. She said that since there is no longer statutory authority to regulate independent third party sampling, the department recommends that the board jointly withdraw the rule making CR-101 filed to comply with the 2006 session bill. Mr. McLaughlin indicated that the Board could either vote on a motion or he could just withdraw the CR-101 with his signature, based on direction from the Board. The Board decided on a motion.

***Motion:** The Board directs staff to withdraw, jointly with the Department of Health, the preproposal statement of inquiry WSR 07-24-092 filed December 5, 2007 regarding Chapter 246-205.*

***Motion/Second:** Yu/Ortiz. Approved unanimously*

#### **7. REQUEST FOR DELEGATION OF RULE MAKING FOR FEDERAL LEAD AND COPPER RULE REQUIREMENTS, CHAPTER 246-290 WAC**

Vice-Chair Higman introduced this item. Ned Therien, SBOH Staff, called members' attention to materials behind Tab 7 and stated that the department's request for delegation appears to meet the Board's criteria for rule delegation. Denise Clifford, Director of DOH Office of Drinking Water, explained that Washington regulates public water systems by carrying out the federal Safe Drinking Water Act under a formal agreement, called primacy, with the U.S. Environmental Protection Agency (EPA). She explained that the department was requesting the Board delegate rulemaking authority to adopt new federal drinking water requirements into chapter 246-290 WAC, Group A public water systems. She then provided details about revisions to the federal rule. In October 2007, EPA issued the Lead and Copper: Short-Term Regulatory Revisions and Clarifications Rule.

Mel Tonasket, SBOH Member, asked whether this rule change would tie in with testing drinking water in schools. Ms. Clifford explained that the only links would be if a public school has its own water system or a water system decides to sample at a school and then it would be required to provide results to the school. Member VanDusen asked for clarification on the monitoring changes in the federal rule. Derek Dennis, DOH Staff, explained that the short-term revisions do not increase monitoring; they only affect the start/stop dates for monitoring. Member VanDusen asked how the monitoring requirements apply and who pays for it. Mr. Dennis explained that the water purveyor is required to give priority for monitoring water based on a tiered system. Top priority, tier 1 sites, are single-family residences with plumbing fixture installed after 1982. Tier 2 sites are multi-family residents (not including schools). Water systems are not likely to get to schools for this monitoring. Monitoring is paid for by the water system. Member VanDusen asked if the state could change the monitoring requirements to include schools. Ms. Clifford said that the Washington rules could be more stringent than federal rules. Mr. Dennis pointed out that

the federal rule is based on an assumption that a person's greatest exposure is first thing in the morning at home.

Member VanDusen asked if more thought could be given to including schools in the requirements for this rule. Ms. Clifford said it could be explored as part of the stakeholder input. Mr. Therien pointed out that this change could affect whether the department's rule making would fit the Board's delegation criteria. Member Higman wondered if it was really possible to compare the lead and copper monitoring in the school rule proposal with the federal requirements for water system monitoring. The school rule proposed requirements focus on fixtures, while the federal lead and copper rule focuses on an average of the entire water system. He indicated that they were very different models. Member VanDusen said she did not wish to hold up rule delegation. Ms. Clifford said adding requirements on water utilities for school monitoring could be a controversial new monitoring burden. Chair Katz asked if there was a motion or if the Board needed more information. Member Tonasket asked the department to consider the possibility of adding schools to the monitoring requirements and bring it back to the Board. Ms. Clifford pointed out that the federal rule increases notification requirements for vulnerable populations. Deputy Secretary White recommended that the delegation be limited to the proposed motion regarding adopting the federal rule.

***Motion:** The Board delegates authority to the Department of Health to adopt a revision to chapter 246-290 WAC, regarding Group A public water supplies, for the sole purpose of incorporating provisions of rules of the EPA published in October 2007 for lead and copper monitoring, control, and consumer information.*

***Motion/Second:** Austin/Higman. Approved unanimously*

Member VanDusen requested a briefing by DOH in the future on some of the ideas discussed today about water system operators sampling for lead and copper in schools with the possibility of the Board then initiating a separate rule making.

## 8. 2009 LEGISLATIVE SESSION REVIEW

Mr. McLaughlin reported on the 2009 legislative session. He noted that the Legislature had to develop a budget that reflected the effects of the recession. This included concerns about cutbacks to school districts. He summarized some of the bills that Board staff provided input on or tracked during the session. The Legislature considered many bills related to reforming and streamlining government. Very few major policy initiatives passed. One that did was a basic education reform bill, SSB 2261. Materials behind Tab 8 provide a summary.

He commented on several bills that will require changes to Board rules. The final version of ESHB 2327 will require some clarification with the Governor's office about whether the State Health Report and the Annual Report are still both required because the Legislature seemed to make them redundant. He said he thinks the Governor's office would consider one report every two years sufficient.

He explained that the budget cuts for the Basic Health Plan are about 42%. The Health Care Authority has flexibility around how to achieve the savings. The initial hope was that attrition would reduce the number enrolled; however, the recession has slowed the attrition rate. The

Health Care Authority is considering whether to charge more to enrollees in order to reduce the membership cuts.

*The Board recessed for lunch at 12:05 p.m. and reconvened at 1:32 p.m.*

## 9. PUBLIC TESTIMONY

Evan Ujjiye, Director of Capitol Projects for Northshore School District and representing the Puget Sound School Coalition, testified that his school district has enjoyed strong voter support in passing bond measures. He said in a recent survey of teachers, 90% said they had adequate light, 82% said their work areas were well designed, 72% said they had good ventilation, and 59% said they had adequate heat. He said that even with their relatively good local funding, the school district would need additional funding to meet the Board's proposed school rules and other school districts would have a more difficult time. He estimated that the requirement that laser printers be located in ventilated areas would cost his school district about \$3 million for half of them. He described recent funding cuts to schools. He encouraged the Board to further look at how the most critical health and safety issues could be addressed in the most cost-effective manner. He asked that the Board work with the Legislature to identify funding first.

Jennifer Aspelund, citizen, expressed concern for how things have transpired for the proposed school rule. She wondered if there were ways that parts of the rule could be implemented that do not have new costs, such as updating the school health and safety guide. She said she feels that the Board has been duped by being too trusting of the Legislature. She expressed displeasure that school groups did not lobby the Legislature for funding for implementation of the proposed rule.

Thelma Simon, citizen, read from a 2002 newspaper article approving of teachers pushing for better air quality in Cle Elum-Roslyn High School. She expressed dismay that the Governor supported the language in the budget that restricts implementation of the proposed school rules, even though while she was the Attorney General she released a report about sick school buildings. Ms. Simon expressed concern that schools used public funds to hire lobbyists to fight health and safety rules for students. She related her long involvement in trying to get rules passed and concerns for the health of students and teachers in Cle Elum. She suggested schools could voluntarily set up a complaint procedure that would not cost much. It would provide information that could be useful in the future to address problems. She expressed hope that the next generation of students is not endangered in their school rooms.

Denise Frisino, teacher, testified that test scores of students improve after renovation of school rooms. She related a proposal in the Seattle School District to close a school and move students into a school with known mold problems. She said she hopes that the Board can come up with a way to protect those children.

James Green, citizen, spoke about the proposed school rule. He said he felt "hoodwinked" by legislative action buried in a 500-page document. He said that many years ago he came to the Board to ask for an emergency response. He said he is back today again to ask the Board to take an emergency response to protect health and safety. He asked the Board to move the rule forward by requiring new schools to meet new standards and phase-in requirements for existing schools as problems are identified by complaints. He asked the Board to take a token vote today to show where everyone stands.

## 10. BOARD MEMBER COMMENTS AND CONCERNS

Chair Katz said he has worked for the health of children for more than 30 years and has been honored to serve on this Board, which is a group that is committed to do something to help children in the school setting. Dr. Yu reported that members of the Health Disparities and Health Promotion committees recommend combining the two committees. She said the committee would look at all issues that come to the Board with a health disparities value filter. She said she and Dr. Ortiz have discussed feeling disconnected from the Board because of the decreased frequency of meetings and recommend going back to a minimum of eight meetings a year. Member VanDusen said she is also concerned that fewer meetings per year limits public access to the work of the Board. John Austin, SBOH Member, said he thinks it is important to have face-to-face meetings.

## 11. SCHOOL RULE, CHAPTER 246-366A WAC, CONTINUATION OF BOARD DELIBERATIONS

Chair Katz introduced the agenda item by explaining where the Board left off in October 2008. He explained that at that meeting all Board members asserted their support for the proposed revision of the school environmental health rule. He reminded Board members that a subsidiary motion had passed on a split vote to delay a vote on adoption to no later than June 2009. The initial motion to adopt the rule is still before the Board. Chair Katz said he thought that the Board should hear updates and have a discussion prior to taking a vote on the motion. He asked for Member Tonasket's consent to this approach. Member Tonasket agreed to the request. Member Tonasket said he would like to hear recommendations from the Board's Environmental Health Committee about actions of the Legislature before continuing. Chair Katz complemented the committee members on their work to bring a recommendation to the Board.

Vice Chair Higman talked about the complexity of the school rule issue. He explained that the Legislature took an action that affects the process for this rule. He pointed out that the Environmental Health Committee has the following goals: continue progress towards reaching the golden ring of environmental health and safety for school children; be realistic about impediments to progress and not undermine the current rule; and understand what is meant by the Legislature's action. He asked Mr. Therien to take the Board through the update.

Mr. Therien began his presentation by describing the materials behind Tab 11. He gave a brief history of the school rule, chapter 246-366 WAC. He explained that the proposal before the Board in October was to repeal the old rule at the time the new rule became effective. During the past session, the Legislature included a proviso in the 2009-2011 state operating budget stating that new or amended rules on school facilities "shall not be implemented" without the provisions being reviewed and funded by the Legislature. Board and department staff have had discussions with committee members to try to determine the meaning of *implemented* versus *adopted*. The decision is that the words are not synonymous. Repealing the old rule while adopting a new rule that could not be implemented, however, would leave the state without a rule that could be implemented. The EH committee recommends filing a supplemental proposal that reflects the Legislature's restrictions on implementation, does not automatically repeal the old rule, and makes a few other changes for clarity. The supplemental CR-102 could be filed within a month to allow for a new hearing in August 2009. He said that the EH committee recommends having an effective date no earlier than September 1, 2011. That would be past the restrictions of the current biennium and fit with the September 1 date preferred by school personnel. This

suggested effective date would need to be altered if there is an extension of the legislative restrictions.

Mr. Therien then quoted from the “Proposed Illustrative Language for Amendment of SBOH School Rule Proposal” to illustrate the types of language changes which would be required in the supplemental proposal. Mr. McLaughlin pointed out that this language was just illustrative and not comprehensive. He said more crafting of the language would be necessary. Mr. Therien stated that if the Board wanted a hearing to occur in August, new language addressing the legislative restrictions and other changes would need to be developed quickly. He said proposed changes to the rule would not make it necessary to revise the significant analysis and small business impact statement.

Member Tonasket asked how “implementation” and “adoption” were different from a legal point of view. He also asked what “facilities” means. Mr. McLaughlin explained that the term school facilities is used in proposed rule language to mean school buildings and administration. He further explained that “implementation date” does not appear in the Administrative Procedures Act, whereas the terms “adopt” and “effective date” are used in the act. Melissa Burke-Cain, Counsel to the Board, explained that since “implementation” is not a defined term in statute, it would be defined according to its common meaning in the dictionary.

Dr. Ortiz asked what implementation in stages would look like and should the Board consider in what order that would happen. Mr. Therien responded that it would depend on decisions to be made by the Legislature because of restrictions in the biennial budget bill. Deputy Secretary White asked what had happened with the discussions about the building code council moving some of the rule language into their code. He also pointed out that the Legislature’s discussions have not considered the costs to local health for implementing the rule. Member VanDusen responded that a number of local health agencies charge for this program. She also said that a careful effort had been made not to duplicate language in the building code in the school rule proposal and that health and safety issues were best addressed by the Board.

Vice Chair Higman explained that the committee considered three primary options:

- (1) Adopt the rule proposal from October, which might mean that the Legislature would remove the Board’s ability to establish minimum health and safety standards for schools;
- (2) Do nothing but leave the old rule in place and wait for the economy to catch up, which would result in loss of momentum and work product; or
- (3) Develop a middle ground proposal that addresses the Legislature’s restriction on implementation and fosters dialogue to move forward.

He said the committee is recommending the last option—amend the proposal, and file a supplemental CR-102. This would provide additional opportunity for public comment.

Member VanDusen reminded the Board of the goals set when starting the rule making. She said it appears clear that the Board’s attention to school health and safety issues has affected activities of many school districts in their efforts to improve health and safety of their students. She mentioned that in 1967 she was implementing school health and safety rules in King County. She also mentioned working on school playground safety issues when working for the Department of Health in the early 1990s. The Board’s proposed rule now addresses school playground safety. She said she thinks the committee recommendation is a middle road that honors the legislative directive, and moves the rule forward. She said she is frustrated and

disappointed in legislative decisions that did not provide funding. Chair Katz said that he understands the state budget problems and thinks the committee's recommendation would keep the rule alive for possible future funding when times are better.

Member Tonasket commented on the perceived threat from Representative Ross Hunter to the Board at its September 2008 meeting. He said he was particularly upset that Representative Hunter testified to the Board without listening to the testimony of the parents and teachers. He pointed out that children are required by law to attend school. He said that he knows that parents and teachers took their complaints about schools to legislators during past good budget years and the Legislature did not fund improvements. He said every rule the Board passes to save lives and improve safety costs someone money. He criticized public school districts for their lobbying efforts to try to kill the rule. He said the public should be alarmed that legislators listen to lobbyists more than the Board on health issues. He said he considered quitting the Board because of these legislative actions, but has decided to stay on the Board to keep reminding the legislators to do their job. He said he looks forward to working with the public to keep the rule moving forward.

Member Austin commented that he feels honored to sit on this Board with such articulate members. He complimented staff on its work. Deputy Secretary White commented that the department has spent about half a million dollars on developing and trying to adopt this rule. He wishes he could have used the money instead to provide technical support for schools and local health. He said the rule proposal is a good proposal and only suffers from political issues. He recommended following the committee recommendation.

Vice Chair Higman made a substitute motion to Member Tonasket's motion to adopt, which had been delayed from October 8, 2008. Dr. Yu raised a point of order that the motion from October 2008 needed to be decided before voting on a new motion from Vice Chair Higman and the committee. Melissa Burke-Cain and Mr. McLaughlin discussed options with the Board for accepting the substitute motion. Member Tonasket agreed to allow a friendly amendment from Vice Chair Higman according to recommendations of the EH committee.

*The Board took a break at 3:01 p.m. for legal counsel to review the rule of procedure and reconvened at 3:09 p.m.*

The Board voted on whether to substitute the following motion for the October 8, 2008 motion.

***Motion:*** *The Board directs staff to revise the rule proposal for chapter 246-366.A WAC, school environmental health and safety, as published in WSR 08-15-174 and continued as WSR 09-04-049, with changes and additions considered and approved by the Board on October 8, 2008 and in accordance with direction provided today. The Board further directs staff to make any additional amendments recommended by the Board's Environmental Health Committee between June 10, 2009 and filing of a supplemental CR-102 for this rule proposal before July 8, 2009.*

***Motion/Second:*** *Higman/Austin. Approved unanimously*

Member VanDusen suggested a discussion on whether to hold a Board meeting in August. Chair Katz said that he would be willing to serve as chair through then unless the Governor appoints a new chair before then. Mr. McLaughlin said staff would schedule a meeting for August.

**12. RECOGNITION OF THE CONTRIBUTIONS OF TREUMAN KATZ TO THE STATE BOARD OF HEALTH**

Postponed by Chair Katz in favor of adjournment.

**ADJOURNMENT**

Treuman Katz, SBOH Chair, adjourned the meeting at 3:10 p.m.

**WASHINGTON STATE BOARD OF HEALTH**

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Treuman Katz, Chair