



**Minutes of the State Board of Health
June 9, 2010**

Hilton Garden Inn Seattle/North Everett, 8401 Paine Field Blvd, Mukilteo, WA 98275

SBOH members present:

The Honorable John Austin, PhD, Vice Chair
Maria Hernandez-Peck, PhD
Frankie T. Manning, MN, RN
Patricia Ortiz, MD
Mel Tonasket

Karen VanDusen
Bill White
The Honorable Donna Wright
Diana T. Yu, MD, MSPH

SBOH members absent:

Keith Higman, MPH, Chair

State Board of Health Staff present:

Craig McLaughlin, Executive Director
Desiree Robinson, Executive Assistant
Heather Boe, Communications Consultant

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

Guests and Other Participants:

Audrey Adams, Washington Action for Safe Water
Joseph Aharchi, Snohomish Health District
Jane Ballard, Snohomish Health District
Phillip Bradshaw, Washington Action for Safe Water
Ann Clifton, Mercury Awareness Team
Harold Clure, MD, Citizen
Teresa Cooper, Department of Health
James Robert Deal, Washington Action for Safe Water
Linda Grafer, Snohomish Board of Health
Carol Kraege, Department of Ecology

Mark Lamb, Snohomish Board of Health
Tim McDonald, Snohomish Health District
Nancy Napolilli, Department of Health
Lynn Nelson, Office of Superintendent of Public Instruction
Bill Osmunson, Washington Action for Safe Water
Suzanne Pate, Snohomish Health District
Olemara Peters, Washington Action for Safe Water
Emily Studebaker, WAEPS
Ron Wohrle, Department of Health

John Austin, Board Vice Chair, called the public meeting to order at 9:06 a.m. and read from a prepared statement (on file).

1. APPROVAL OF AGENDA

Motion: Approve June 9, 2010 agenda

Motion/Second: Tonasket/Yu. Approved unanimously

2. ADOPTION OF MARCH 13, 2010 MEETING MINUTES

Motion: Approve the March 13, 2010 minutes

Motion/Second: Wright/VanDusen. Approved unanimously with a correction in Tab 05, line 12.

3. SBOH ANNOUNCEMENTS AND OTHER BOARD BUSINESS

Craig McLaughlin, Board Executive Director, reported he had spoken with the three Board members who are at the end of their terms (Keith Higman, Frankie Manning, and Mel Tonasket) and to Governor's staff about extending their appointments. The Governor's office will be reviewing applicants, and if appropriate consider new appointments. Until any replacement Board members are appointed, the three current members may continue to serve.

Mr. McLaughlin pointed out materials behind Tab 3 in the Board members' packets, including the *State Policy Action Plan to Eliminate Health Disparities* from the Governor's Interagency Council on Health Disparities; the Governor's executive order *Implementing Health Reform the Washington Way*; a CR-103 rule making order to change the effective date of the new school environmental health and safety rules to July 1, 2011; a letter to OSPI commenting on revisions to the Washington Sustainable Schools Protocol; and H.R. 1191, a federal bill regarding pharmaceutical take-back programs. He noted that the Agency Medical Directors Group had revised its opioid guidelines. Frankie Manning and Diana Yu, SBOH Members, urged the Board to send a letter in support of H.R. 1191.

Mr. McLaughlin explained a request for rule making from Randall Van Sweden dated May 28, 2010 to revise the state's death certificate form because he is concerned smoking-related death rates are inflated. Mr. McLaughlin recommended the Board not take action this day, but leave it to the Chair to decide. Member Yu commented that the box on the death certificate form about whether smoking contributed to death is appropriate based on the expectation it would be determined by physician judgment. She said she would be disinclined to support the change requested. She said a better approach than changing the form would be to provide guidance to those completing the form. Bill White, Deputy Secretary of the Department of Health and SBOH Member, said the Department of Health (DOH) is looking at another issue regarding privacy of the information on death certificates, which may affect rule making. Patricia Ortiz, SBOH Member, said persons completing death certificates often check the "unknown" block regarding whether smoking contributed to death because they do not know the deceased's complete medical history. Tara Wolff, SBOH Staff, said Mr. Van Sweden told her it would be appropriate for the death certificate to gather information about obesity as a contributing factor on. The Board agreed with Mr. McLaughlin's recommendation to let staff gather additional information and leave the decision on the petition to the Chair.

Mr. McLaughlin reported that Vickie Ybarra is leaving her position as Chair of the Governor's Interagency Council on Health Disparities to pursue additional education and has recommended the Council's current Vice Chair, Emma Medicine White Crow, replace her. He acknowledged Member Manning's recent retirement from the Veterans Administration. He reported on Tamara's Fulwyler's upcoming departure from the staff, and recognized her contributions as outreach coordinator for health equity issues. He also acknowledged Member Yu's Health Care Champions award.

4. DEPARTMENT OF HEALTH UPDATE

Deputy Secretary White described DOH activities related to reshaping public health (see handout under Tab 3). Current budget problems are major drivers for this, he said, but the process began several years ago. He said we need to prioritize public health programs to save the most important. Mary Selecky has appointed a workgroup to develop recommendations and report to her is due this month. He recommended the Board ask for a briefing. He also noted that the current state budget was based on expectations that the state would receive additional federal money for Medicaid and the so-called FMAP-extension is now in doubt. Mel Tonasket, SBOH Member, commented the

efforts to define public health seemed perpetual and expressed concern about spending money to keep revisiting prioritization done in the past. Karen VanDusen, SBOH Member, asked whether local boards of health would be involved in this process. Deputy Secretary White said this activity was based on updated considerations and he expected local boards of health would be involved in a stage of the process after local staff.

Deputy Secretary White reported requests for exemptions from childhood immunizations are down, rates for giving immunizations are up, and the vaccine partnership is operating. He said Janna Bardi of DOH was recognized nationally for her work to help get the vaccine partnership formed. He said DOH identified inconsistencies in the information about immunization requirements posted on its website, but has gotten those corrected. He noted DOH sits on a group of state natural resource agencies. The group identified the restoration of shellfish growing areas as an important measure of natural resource protection. He also reported that temporary layoff issues are making staff very anxious. He expressed concern for lower-paid workers, but said the legislation is clear that cuts must come out of compensation reductions and cannot come from other savings.

5. BOARD MEMBER COMMENTS AND CONCERNS

Member VanDusen thanked staff for getting the CR-103 for the school rule filed on time. She said the Environmental Health Committee recently looked at the Board's strategic plan and noted good progress has been made. She suggested adding committee reports to the Board meeting agendas. Member Manning encouraged Board members to take time to look at the *State Policy Action Plan to Eliminate Health Disparities* included under Tab 3. She complimented staff members Christy Hoff and Tamara Fulwyler for their excellent work on the report, including finishing it six months ahead of time. Dr. Ortiz said the vaccine partnership has helped make sure children's vaccines are available and thanked Dr. Yu for her efforts in moving it along. She expressed apprehension about the move to electronic meetings.

The Board took a break at 10:14 a.m. and reconvened at 10:30 a.m.

6. DISCUSSION OF FUTURE MEETING FORMATS

Mr. McLaughlin explained new statutory restrictions on travel reimbursement for board and commission members during 2010-11 and a requirement to use government facilities for meetings. He said this further erodes the Board's ability to meet frequently around the state. The new requirement seems to be several years ahead of the deployment of the necessary technology. Exceptions must be approved by Office of Financial Management and reported to the Legislature.

Heather Boe, SBOH Staff, reported on options for meeting electronically. She looked at the location of DOH videoconferencing sites and determined they are not close to where most members live. There are K-20 videoconferencing facilities in more locations, which might be available when there is an education-related agenda item. The Nursing Commission has been using an electronic meeting format and reduced costs from \$27,000 to \$7,000 per year compared to single-location meetings requiring travel. The Department has purchased videoconferencing equipment for some local health jurisdictions and tribes, but we do not know when the equipment will be up and running. There are several different electronic formats and products for Web meetings. Some products allow public viewing, but costs might be prohibitive. There might be ways to bridge the DOH videoconferencing system with other governmental or local hospital videoconferencing systems. Staff will survey Board members about the technology they can access locally.

Member Yu noted the Washington State Association of Local Public Health Officials electronic statewide meeting was an example of technology not working well. Mr. McLaughlin said staff has not yet figured out how to use electronic products to make meetings more accessible for the public. Member Manning asked if the law precluded use of federal systems. Mr. McLaughlin replied that would not be prohibited, but we would have to determine if the federal system could be bridged with the DOH system. Member VanDusen said she is very frustrated by the statutory mandate because it will be inefficient, decrease public participation, and discourage people from volunteering for boards. She wants to have face-to-face meetings whenever the Board holds rule hearings or expects guests. She encouraged staff to track costs of developing and using the electronic systems. Member Tonasket urged the Board to preserve public access to activities such as rule development. He wondered why the Legislature did not move to such a system for meetings themselves if this way of meeting is so efficient. He is not technologically competent so electronic participation will be difficult for him and make it hard for him to continue to advocate for the public. Maria Hernandez-Peck, SBOH Member, commented that she has seen examples where electronic meetings have been very beneficial. On the other hand, she has experienced many technological problems in electronic meetings. She would have difficulty dealing with new technology on her own. She will try to find ways to arrange her travel schedule or travel at her own expense, so she can attend Board meetings.

Mr. McLaughlin proposed rearranging the meeting agendas for the rest of the year to consolidate all public hearings into a November in-person meeting and applying for an exemption. He also asked for feedback on reducing or dropping briefings during electronic meetings to shorten meetings. Member Tonasket wondered how Board committee work would take place, and recommended shortening Board meetings. Member Yu said briefings are important given the contribution of member discussions in making good decisions. Member VanDusen said she also finds briefings useful. She recommended any business requiring guest attendance should be during in-person meetings. She said she would drive to meetings, even if not reimbursed. Meetings should be scheduled so members can drive to them and return home in one day. Member Yu said videoconferencing meetings using two locations seems to work. Member Tonasket said if the public can drive across the state to address the Board, he would be willing to do so to attend a meeting. Member Manning said in-person meetings are most effective. Member Wright said the Board should not try to pack too much into in-person meetings and it would be difficult to sit through five hearings in one day.

Mr. McLaughlin summarized the discussion. The Board asked Mr. McLaughlin to develop another proposal for them to consider. Deputy Secretary White commented he would research the availability of DOH videoconferencing facilities.

7. REVIEW AND POSSIBLE APPROVAL OF BIENNIAL REPORT

Taken out of order in agenda.

Mr. McLaughlin reviewed draft 2010 Biennial Report to the Governor. He explained there are six strategic directions in this report. The sixth one is new. He asked for comments and feedback from Board members, as well as sense of approval. Member Tonasket commented he was happy with the document. Member VanDusen asked that staff update her affiliation. Mr. McLaughlin noted a picture that needs to be changed because it shows bicyclists without helmets.

Motion: *The Board approves the 2010 Biennial Report and authorizes the Chair or his designee to approve any changes before transmitting it to the Governor for her consideration.*

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

8. WELCOME FROM SNOHOMISH HEALTH DISTRICT BOARD OF HEALTH

Member Wright welcomed the Board to Mukilteo on behalf of the Snohomish Health District Board of Health. She said the new board chair, Bothell Mayor Mark Lamb, would arrive later, as would Linda Grafter of Mukilteo. She introduced staff from the Snohomish Health District: Tim McDonald, Suzanne Pate, Jane Ballard, and Joseph Aharchi.

9. THE ASSESSMENT AND HEALTH OF SNOHOMISH COUNTY

Jane Ballard, Snohomish Health District Manager of Health Statistics and Assessment, gave a presentation about the health of Snohomish County, assessment and health, and a summary (see presentation under Tab 9). She provided statistics from *Signals 2, Public Health Indicators of Snohomish County*. Ms. Ballard said assessment is a core public health function and awareness is the first step to prevention. Analytical tools, assessment staff, and reliable databases are necessary to monitor the health of the community. She expressed concern for budget cuts for health assessment.

10. IMPACT OF MULTI-DRUG RESISTANT TUBERCULOSIS

Joseph Aharchi, Snohomish Health District, gave a presentation about tuberculosis and the impact of multi drug resistant (MDR) strains (see presentation under Tab 10). Treatment for normal tuberculosis could take 9–12 months. Treatment for MDR strains could take 18-24 months. Two cases of MDR tuberculosis in 2010 have required the health district to spend \$140,000 from reserve funds. Beside the cost of medications and district staff time, the district must provide living necessities for those in isolation. The district must also investigate contacts. The increase in MDR tuberculosis is a global phenomenon expected to increasingly affect communities in Washington.

11. BOARD-TO-BOARD DISCUSSION OF LOCAL ISSUES

Vice Chair Austin asked what was causing the increase in unintentional poisonings in Snohomish County. Ms. Ballard said it is related to the use of painkillers. Deputy Secretary White asked how integrated the health district data was with the military data in the county and how the district works with the private sector. Ms. Ballard replied it can be difficult to get information from the military. Suzanne Pate, Snohomish Health District Public Information Officer, said the health district participated in company health fairs, promoted health statistics on the Web, and shared information by other means to increase awareness for employee wellness programs. Dr. Ortiz asked what percentage of the county population is associated with Boeing or the military. Ms. Ballard said she would get back to the Board on that question. Member VanDusen asked if most tuberculosis cases occurred in foreign-born people. Dr. Aharchi replied that was the case. He said MDR strains appeared in persons who had received prior, inadequate, treatment. Member VanDusen asked whether we would likely need sanatoriums again. Dr. Aharchi replied he did not think it was feasible to go back to that model for controlling tuberculosis. Tim McDonald, Snohomish Health District Director of Communicable Diseases, commented that many travelers from the U.S. go overseas to endemic areas and could bring tuberculosis back. Member Yu said travel, immigration, adoptions, and the increase in HIV cases contribute to the spread of tuberculosis. Regarding the potential need for sanatoriums, she said places now used to isolate non-cooperative infected individuals, such as jails, are not the best. She said managing tuberculosis is a big challenge for all local health districts. Linda Grafer, Snohomish Health District Board of Health Member, said an important priority for her is to educate the community about factors affecting their health. Mr. Lamb, Mayor of Bothell and Chair of the Snohomish Health District Board of Health, said he considers it important for public health in Washington to speak with one voice. Mr. McDonald said local health looks to the State Board of Health to be an advocate for public health. He expressed concerns that moving to electronic meetings could hinder public participation especially for minority and low-income populations.

Member Tonasket said that as a tribal clinic administrator he had been concerned about the lack of prenatal care for younger mothers. He asked if information by age groups is in the Snohomish Health District's report. Ms. Ballard said it was. Member Manning asked about services for non-English speaking community members. Ms. Ballard said the need to serve non-English speakers was increasing. Mr. McDonald said the district relies on translator services as well as bilingual staff.

The Board recessed for lunch at 12:17 p.m. and reconvened at 1:15 p.m.

12. RULE HEARING ON WAC 246-760-100, QUALIFICATIONS FOR VISION SCREENING PERSONNEL IN SCHOOLS

Member Ortiz introduced this agenda item. Tara Wolff, Board Staff, explained that WAC 246-760-100 lists the qualifications required for people who provide visual screening to students in schools. It specifies that ophthalmologists, optometrists, opticians, or any individual who may have a conflict of interest cannot perform vision screening in schools. In 2009, the Legislature passed a bill allowing these professionals to perform vision screenings if they donate their time. The bill also states that schools must contact parents with the screening results. The Board filed a CR-105 to revise the WAC to conform to the amended statute was filed, but it received an objection from Ms. Studebaker on behalf of the Washington Academy of Eye Physicians and Surgeons (WAEPS). In response, the Board filed a CR-102 and is holding a public hearing today before filing a CR-103. Two motions are before the Board. The rule can either simply refer to the statute (RCW 28A.210.020) or leave the language as it was filed with the CR-105 (OTS-2912.1). Ms. Wolff then introduced Teresa Cooper, DOH, and Lynn Nelson, OSPI School Nurse Corps Administration.

Teresa Cooper, DOH, reported on three comments received about the proposed rule. One comment supported adopting the rule. WAEPS's comment suggested the rule was inconsistent with the law and the Legislature's intent. It wants the rule language to iterate statutory safeguards and describe a clear procedure for informing parents of screening results. The third comment said volunteers should not do vision screening without specific training, and noted that vision screening is accorded less importance than hearing screening.

The Department recommends adopting the proposed rule as originally submitted because rules do not need to restate statutory language; rather, they are meant to clarify laws. The intent of this rulemaking is only to amend the rule so that it does not conflict with the law. RCW 28A.210.020 does not prohibit the use of volunteers. Not allowing volunteers to assist in the screening could be a burden on school personnel. The intent of the legislators in passing the law was to decrease the difficulty schools encountered in carrying out mandates such as screening.

Mr. McLaughlin called the Board's attention to the email from Theresa Hutchison in the Board packet.

Emily Studebaker, representing Washington Academy of Eye Physicians and Surgeons, testified against adoption of the proposed rule. She noted that the law included a requirement that the schools report results to parents. The organization she represents has a concern for protecting students from the business interests of volunteer screeners. She asked that rule language prohibit people with a potential conflict of interest from volunteering. She said it is important to restate statutory language concerning notification because professionals refer to regulations not statutes.

Mr. McLaughlin explained that the statute did not prohibit people with a conflict of interest from volunteering in the schools – only the Board rule addressed this concern. In 2009, the Legislature changed the statute to make it easier for schools to use a wider range of volunteers. Member Tonasket asked if either of the motions satisfied Ms. Studebaker’s concern. Drs. Yu and Ortiz commented they did not. Mr. McLaughlin stated that as he understood the WAEPS request it would prohibit self-referral by proxy by a volunteer somehow associated with an eye care professional. He said the change requested would require the Board to interpret the intent of the Legislature. It would require the Board to define conflict of interest and might add ambiguity to the rule. Ms. Burke-Cain added that it could be difficult for school officials to interpret who might have a conflict of interest. Mr. McLaughlin explained that there are other rules that explain how school officials should inform parents of screening results. Member VanDusen wondered what problem would be caused by adding some language from the statute to the rule. Mr. McLaughlin asked Ms. Nelson to comment on what happens in schools. Lynn Nelson, OSPI, said school nurses coordinate vision screening and are well aware of the rules and statutes. She said it is impractical for the school nurses to screen volunteers for potential conflicts of interest. Deputy Secretary White said the Board’s responsibility is to encourage children to get vision screening so that they can be treated if needed so that they can learn. The Board’s role is not to regulate the business practices and ethics of the vision professionals. Member Manning agreed with Mr. White’s comments. Dr. Yu recommended against adding the specific language requested and suggested adopting the alternative language in the Board’s packet, which references the relevant section of the statute. Member VanDusen concurred with Dr. Yu.

***Motion:** The Board adopts the revised WAC 246-760-100 as published in WSR 10-10-125 with the amendment proposed in the document titled Alternative Language for WAC 246-760-100.*

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

13. ZONOTIC RULES BRIEFING (WAC 246-100-191, -192, 196, -201)

Member VanDusen introduced this agenda item. She explained the Board has authority to control communicable diseases transmissible from pets to humans. The Board has two rule sections that aim to prevent and control zoonotic diseases: WAC 246-100-191 and WAC 246-100-201. Ned Therien, Board Staff, explained that DOH has been working with an interagency advisory workgroup for over a year to develop four updated, revised, or new rule sections. He introduced Nancy Napolilli and Ron Worley, DOH. Nancy Napolilli, Director of the Office of Environmental Health, Safety, and Toxicology, presented background on the rule, rule revision process, recommended changes, and next steps (see materials behind Tab 13). She said the proposal would split WAC 246-100-191 into two sections, one regulating vendors of certain animals and animal products and the other controlling rabies; would create a new section to protect the public from contracting zoonotic diseases from contact with animals displayed in public settings (such as petting zoos); and would update WAC 246-100-201 concerning psittacosis. She said staff is preparing cost-benefit and small business economic impact assessments. New costs are expected to be low. She said the proposal would be ready for a public hearing in October or November.

Member Yu asked what liability a local jurisdiction might have if it did not implement the rules, for example, the vaccination and quarantine requirement. Melissa Burke-Cain, SBOH Legal Counsel, said she would think about the question and get back to the Board. Member Yu said local realities around implementation should be considered. Ms. Burke-Cain said that in cases where health jurisdictions do not act, DOH could. Mr. Therien clarified that the rule language does not require local health jurisdictions to take enforcement actions, rather it gives local health officers permissive authority. Member Yu asked that Ms. Burke-Cain still look at her question. Mr. McLaughlin said the

question seems to be about where the liability would lie in cases where permissive authority is not used and someone is hurt. Frequently, Board rules reinforce health officer general authority. Member Yu said she supports the proposals and appreciates proposed provisions regarding animals in public settings, but she is very aware of the budget constraints of some local health jurisdictions. Deputy Secretary White asked what is driving the need for this rule making activity. Mr. Therien said it was initiated primarily by the 2004 Board report: *Zoonotic Diseases and Exotic Pets: A Public Health Policy Analysis*. Provisions for animals in public settings were driven by disease outbreaks. Ms. Napolilli commented on the substantial increase in animal importation and the importance of keeping our state free of canine and terrestrial rabies. We are one of only nine such states. She said the proposal would be cost-effective and protect our residents' health. These rules would not put requirements on local health jurisdictions; rather they specify requirements for owners, vendors, and certain public animal displays. Deputy Secretary White said it was important to explain clearly to the public the rationale for these rule changes. Member VanDusen mentioned a good program she observed recently at the Portland Zoo's petting area, which includes hand washing stations.

14. STATE LEAD ACTION PLAN AND CHILDHOOD LEAD POISONING PREVENTION BRIEFING

Member VanDusen introduced this agenda item. She reminded members of two strategies in the Board's strategic plan: (1) Support efforts to reduce levels of persistent bioaccumulative toxins and (2) Increase awareness of threats to children from environmental toxins. She explained that this briefing would focus on two programs designed to address problems with lead. Mr. Therien introduced the two guests and described how their presentations relate to protecting children from toxic chemicals. Materials for the presentations are available under Tab 14 in the Board's packet.

Carol Kraege, Department of Ecology Toxics Policy Coordinator, discussed the State's Lead Chemical Action Plan. She said the primary risk factor for children is the age of the house where they live because of exposure to paint chips and dust. She said not enough children in Washington are tested for blood lead to accurately know how many have elevated levels. Therefore, the level of risk is unclear. About 40% of housing nationally has lead paint and 25% of that housing has active lead hazards. Recommendations in the Lead Chemical Action Plan are aimed at remediating older rental housing and encouraging testing for blood lead levels. She said a goal set last year of getting the state Department of Commerce authority to enforce the federal renovation, repair, and painting rule for contractors was achieved this year. She said Ecology is interested in partnering with DOH to help prevent children's exposure, but recognizes that budget problems limit prevention initiatives.

Member Wright said education of tenants by landlords is already required and expressed concerns about the cost of lead assessments affecting the availability of affordable housing. Ms. Kraege said assessments did not result in as great a cost as remediation. Member Yu said studies of blood lead levels in Washington children along the I-5 corridor were done several years ago and did not indicate the rates are high. She asked what happens when children's blood lead levels are elevated, above 5-10 micrograms per deciliter, but remain under 25. Ms. Kraege said there is no medical intervention recommended at blood lead levels below 25. The interventions are limited to education and removing exposure sources. Ms. Jenks said she is pleased to say children's blood lead levels have been coming down nationally. She said a study done about ten years ago found Washington below the national average of 1% for elevated blood lead level (above 10 micrograms per deciliter) in children. The rate of children in Washington above the action level is 0.4%. She said studies show health risks in children with blood lead levels under 10 and there is a movement to convince EPA to

lower its recommended action level to five or less because of the subclinical affects of lead on children.

Deputy Secretary White asked for clarification about slide five in Ms. Kraege's presentation, which describes known risk factors in Washington. Being born poor is not the cause of exposure, but being poor is associated with being in older housing and having less access to health care if children have elevated lead.

Lauren Jenks, DOH, gave a presentation on the Childhood Lead Poisoning Prevention Program. She said DOH encourages primary care providers to bring children's blood lead levels down by educating parents about exposure, not through medical intervention. She said that with levels in the 5-10 range it is hard to say what the primary exposure agent is, but it is probably not lead-based paint. Mr. McLaughlin asked how the level of five was set for recording data and commented that some people think no levels are safe. Ms. Jenks said it was arbitrary, partially based on screening machines being able to detect down to blood lead levels of 3.3. She said some studies show health effects at blood levels lower than five. Dr. Yu asked if blood lead testing machines were reliable. Ms. Jenks said the false positive rate is about half, but provides an indicator to encourage laboratory testing. Dr. Yu said testing machines were good for screening but not treatment. She said treatment posed its own risks. Targeted testing might identify cases, but a more general approach of educating people to avoid exposures provides more bang for the buck. She said the only case of elevated blood lead level in a child she has seen during her tenure as a health officer was associated with bullet manufacturing in the home.

15. REQUEST FOR RULE MAKING DELEGATION – UPDATE TO LATEST VERSION OF NATIONAL SHELLFISH SANITATION PROGRAM GUIDE (WAC 246-282-005)

Taken out of order (moved to 1:15PM)

Member VanDusen introduced this agenda item and directed the Board to materials behind Tab 15 in their packets. She explained that the Board has rule making authority for molluscan shellfish sanitation and has adopted chapter 246-282 WAC. This rule references U.S. Food and Drug Administration (FDA) national guidance, which is being updated by FDA. She said the Board has before it today a request from DOH for delegation of rule making to update the Board rule to reference the updated national guidance quickly. Member VanDusen said that the Board's Environmental Health (EH) Committee recommends approval of the delegation request. Mr. Therien explained DOH would like to be able to rapidly adopt the newest version of the FDA molluscan shellfish guidelines when they come out to assure Washington shellfish products may continue to be shipped around the country. He said the Board has delegated rule-making authority to update this rule in the past. He introduced Maryanne Guichard, Director of the DOH Office of and Shellfish and Water Protection, who said she would answer any Board members' questions about the request. She said the FDA changes the national consensus code every two years. She said when the Board had delegated updating this rule in the past no one showed up at the rule hearings because of the collaborative relationship the program has with the industry and tribes. She said stakeholders understand the importance of having state rules be consistent with the national guidelines and they work at the national level to provide input to help update the guidelines. Deputy Secretary White expressed support for delegation. He commented on the Board's large workload and how Ms. Guichard had demonstrated an excellent working relationship with the industry.

***Motion:** The Board delegates to the Department of Health authority to adopt a revision to WAC 246-282-005 for the purpose of referencing the most current version of the NSSP Guide for the Control of Molluscan Shellfish, the 2009 edition.*

***Motion/Second:** Yu/White Approved unanimously*

Member Yu asked if legal counsel would look into a way the Board could more easily update Board rules when federal rules or guidelines are updated. She noted that some updates are published on the Web these days. Ms. Burke-Cain agreed to look into this.

The Board took a break at 3:31p.m. and reconvened at 3:40 p.m.

16. PETITION FOR RULE MAKING, CHAPTER 246-290 WAC) – WATER FLUORIDATION

Member VanDusen explained that the Board received a petition for rule making from Bill Osmunson, DDS, MPH, president of Washington Action for Safe Water on May 11. His petition asks the Board to amend two sections in chapter 246-290 WAC for Group A public water systems to: (1) allow concentrations of fluoridation additives in water only as approved by the U.S. Food and Drug Administration (FDA), and (2) require drinking water fluoridation additive chemicals be approved by FDA under a New Drug Application. She said the Board's EH Committee recommends the Board deny this petition.

Mr. Therien summarized the petition; staff member understanding of federal agencies' recommendations and positions on regulating water fluoridation; and the conclusions and recommendations of the EH Committee. He said Dr. Osmunson contends only FDA has authority to regulate water fluoridation for therapeutic or preventive health purposes. He said Dr. Osmunson further contends the addition of fluoride to tap water is unsafe. He said, however, the positions of federal agencies the Board and DOH rely on for guidance do not support Dr. Osmunson's contentions. FDA has a memorandum of understanding finalized in 1979 with the Environmental Protection Agency (EPA), which FDA staff interprets to mean FDA does not intend to regulate tap water additives, just bottled water additives. EPA has established maximum contaminant levels (MCL) for fluoride in tap water. In March 2010, EPA announced in the *Federal Register* it had completed a review of many of its MCLs and stated it did not have enough information to make a change in the MCL for fluoride. EPA will continue to collect information to re-evaluate the MCL for fluoride based on recommendations of a 2006 National Research Council report, which concluded 4 ppm fluoride seemed too high and recommended more research. He explained the Centers for Disease Control and Prevention (CDC) is the federal agency that has set "optimal" levels for drinking water fluoridation to prevent tooth decay. The recommended concentration ranges are based on average maximum air temperature. He said FDA has set very similar concentration ranges in rule if fluoride is added to bottled water. He said EPA recognizes National Sanitation Foundation (NSF) Standard 60 for approval of various drinking water additives. Many medical and public health professional organizations support the CDC recommendations. He said staff concludes the Board rules are consistent with these recommendations and appropriate for our climate. He said although the EH Committee recommends the Board deny the petition, the use of the term "optimal" as used in the Board's rule deserves review the next time this chapter is opened for general revision. Mr. Therien said accepting the petition would put the Board in the position of trying to direct a federal agency to take actions it does not intend to do. Therefore, it would establish a requirement that water districts could not meet, creating a conflict with RCW 57.08.012, which allows the electors of each water district to decide whether to fluoridate the water supply.

Deputy Secretary White asked what avenues exist for petitioners if the Board denies the petition. Ms. Burke-Cain said they could appeal the Board's decision to the Governor. Member VanDusen suggested the Board stay focused on the specifics of the petition, which asks for a change in Board rules to refer to an FDA standard. Since FDA did not have a standard, it would be an impossible requirement to meet. She reminded members that the Board's rules are consistent with national

standards. Member Tonasket asked if a motion should be considered before or after testimony. He said the Board had done it both ways in the past. Mr. McLaughlin said the Board usually did not take public testimony while considering petitions for rule making because the CR-101 process started the public input process. He noted one letter of testimony distributed to Board members that asked for an additional amendment to language in one of the rules. He recommended it be treated as a separate petition and he would work with the chair to address it later. Deputy Secretary White said DOH supports denying the petition based on its understanding of the MOU between the EPA and FDA. He said DOH has supported community water fluoridation for 60 years and called attention to a 2006 statement from Maxine Hayes, the State Health Officer, included in Tab 16 materials.

***Motion:** The Board denies the petition for rule making from Dr. William Osmunson dated May 11, 2010 because the U.S. Food and Drug Administration has a memorandum of understanding with the U.S. Environmental Protection Agency clarifying that the latter agency has authority for regulating tap water.*

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

17. PUBLIC TESTIMONY

Harold Clure, MD, retired family physician from Anacortes and former president of the Washington State Medical Association, supported water fluoridation as a cost-effective public health measure.

William Osmunson, DDS, President of Washington Action for Safe Water, stated he had a mentor in school who told him 50% of what we are taught is wrong, we just do not know which 50%. He used to think water fluoridation benefitted his patients, but after looking at the statistics he changed his mind. He regularly treats patients with tooth fluorosis. He said that an FDA warning on toothpaste says not to swallow a pea-size amount of fluoridated toothpaste — the same amount of fluoride as in an 8-ounce glass of fluoridated water. He thinks this is an inconsistency, caused by FDA not regulating fluoride added to water as a drug. He said EPA scientists are opposed to this.

James Robert Deal, attorney and member of Washington Action for Safe Water, said additional information can be found at WashingtonSafeWater.com and Fluoride-Class-Action.com. He stated FDA and EPA entered into an illegal MOU in 1979. FDA still has the responsibility to regulate fluoride added to water as a drug because EPA does not have authority to do so under the Safer Drinking Water Act. He said EPA does not authorize the addition of fluoride to drinking water, but only limits the level of naturally occurring fluoride allowed. Water fluoridation should be prohibited until FDA regulates it. He said that the agencies are running away from this issue because there is a lot of money involved with selling the chemicals. Fluoride binds with lead, so where water is fluoridated people have higher blood lead levels. He said CDC now says fluoride works topically, not systemically. He stated that NSF is a trade organization run by chemical companies. EPA off-loaded its responsibilities for water additives to NSF. He said he will follow-up with a letter.

Audrey Adams, board member of Washington Action for Safe Water, said her 24-year old son has extreme sensitivity to fluoride. This is a profound sensitivity even causes severe pain from exposure to fluoridated water in a shower. She says she also has a friend who is extremely sensitive to fluoride.

Phillip Bradshaw, Washington Action for Safe Water, described elbow and hip pain he gets. He has a hypothesis that fluoride in water causes his problem. He said he gets the pain when he drinks Seattle's fluoridated tap water, but did not have the pain when he worked in Florida and drank much more water each day.

Olemara Peters, Washington Action for Safe Water, stated exposure to fluoride in tap water, both through consumption and showers, causes her health problems. She said she would e-mail a written comment with more detail.

18. LEGISLATIVE AND BUDGET REVIEW

Taken out of order in agenda.

Mr. McLaughlin summarized elements of the state supplemental budget for fiscal year 2010-11. He said the Board did not receive additional cuts other than compensation cuts for temporary layoff days. He referenced information in materials behind Tab 18 in the Board's packet. He explained staff temporary lay-offs follow the dates specified as the standard option by the Legislature. He mentioned new taxes on tobacco, candy, and bottled water. He noted that none of the new taxes on tobacco are going into the tobacco prevention control account. The tobacco prevention control account is projected to be out of money by July 2011. The account that has also been supporting local public health.

ADJOURNMENT

Vice Chair Austin adjourned the meeting at 4:43 p.m.

WASHINGTON STATE BOARD OF HEALTH

John Austin, Vice Chair