



**Final Minutes of the State Board of Health
March 11, 2020**

Electronic meeting via GoToMeetings (GTM)

-or-

DoubleTree by Hilton Hotel Capital Room
415 Capitol Way North
Olympia, WA 98501

State Board of Health members participating by remote GoToMeeting:

Keith Grellner, RS, Chair

Thomas Pendergrass, MD, MSPH Vice Chair

Kelly Cooper, Secretary's Designee

Fran Bessermin

Jill Wood

Stephen Kutz, BSN, MP

Bob Lutz, MD, MPH

State Board of Health members absent:

The Honorable Jim Jeffords

State Board of Health staff present:

Michelle Davis, Executive Director

Melanie Hisaw, Executive Assistant

Kelie Kahler, Communication Manager

Stuart Glasoe, Health Policy Advisor

Lilia Lopez, Assistant Attorney General

Christy Hoff, Board Staff

Hannah Fernald, Task Force Staff

Guests and other participants:

Alexandra Montaña, Department of Health

Tami Thompson, Department of Health

Michael Ellsworth, Department of Health

Kim Granlund, Catering, Doubletree

Bob Runnells

Kathy Bay

Jeffrey Killip, LNF

Linda Redmon

Dr. James MacRae

Ryan Matthews

Katherine Graff

Gregory Foster

Audrey Phillips

Bernadette Pajer, Informed Choice WA

Jena Dalpez, Informed Choice WA

(Below & row on right: GTM Remote)

Sierra Rotakhina, Department of Health

Marcia Goldoft, Department of Health

Cathy Wasserman, Department of Health

Sara Broschart, Liquor and Cannabis Board

Nicole Klein, Office of Superintendent of
Public Instruction (OSPI)

Annie Hetzel, OSPI

Keith Grellner, Board Chair, called the public meeting to order at 9:35 a.m. and read from a prepared statement (on file). He then detailed operating procedure and ground rules for conducting a virtual meeting, and asked Board members to introduce themselves.

1. APPROVAL OF AGENDA

Motion: Approve March 11, 2020 agenda

Motion/Second: Kutz/Bessermin. Approved unanimously.

2. ADOPTION OF JANUARY 8, 2020 MEETING MINUTES

Motion: Approve the January 8, 2020 minutes

Motion/Second: Bessermin/Wood. Approved unanimously.

3. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director welcomed Board members and thanked them for their patience as the staff worked through new meeting technology. She said that Jim Jeffords would be unable to participate in today's meeting.

Ms. Davis announced that Lindsay Herendeen, Board staff, had given birth to healthy baby boy on March 5. She said that Sam Pskowski will begin work on March 16, and will succeed Alex Montañó as a Board policy advisor. Her initial work will include prenatal screening rule, and may work with Cait Lang on the Human Remains rule. Ms. Davis said she had posted the Foundational Public Health Services policy advisor position on March 10, and asked Board members to share the recruitment among their networks.

Ms. Davis said that the CR-101 for the Drinking Water Lab rule is in Board packets, and that Cait Lang had submitted the Human Remains CR-101 package to the Department for filing with the Code Reviser. She said that Stuart had extended the informal public comment deadline for the preliminary draft of the Keeping of Animals rule. She said that several legislators had signed a letter of concern related to the draft (on file). The informal comment deadline is Friday March 13.

Ms. Davis said that the Board's April meeting will be scheduled as a virtual meeting. She said that items that had been pulled from today's agenda, such as the legislative update would be delivered via email, and that the Auditor's briefing on their Performance Audit report regarding Barriers to student compliance with the immunization schedule would be rescheduled for another meeting.

Ms. Davis introduced Ms. Lopez who spoke about the vapor rules litigation. She said that the case was moot since the rule expired. She also said that there was a large group that joined in a brief to support the Board's emergency rulemaking.

4. DEPARTMENT OF HEALTH UPDATE

Kelly Cooper, Secretary's Designee, Director of Policy & Legislative Relations (DOH), said the Department of Health (DOH) has been working on COVID-19. She gave an immunization update, and said the 2018-19 MMR data shows 9.2% of kindergarteners are incomplete for MMR, and 3.1% of K-12 students have an MMR exemption.

Member Cooper spoke about House Bill 1638, which promotes immunity against vaccine preventable diseases and prohibits a philosophical or personal exemption from being used to exempt a child from the MMR vaccine. She said the new rule changes take effect on August 1, 2020 and spoke about the work the DOH Office of Immunizations and Child Profile is doing to educate the public and its partners.

Member Cooper spoke about House Bill 1551, which reduces HIV exceptionalism and improves access to preventative care, House Bill 2426, which better regulates private psychiatric hospitals also passed, Senate Bill 6254, which protects public health and safety by enhancing the regulation of vapor products, and Engrossed House Bill 2965, which provides flexibility and appropriates \$100 million from the Budget Stabilization Account for state agencies, local governments and federally recognized tribes to respond to the novel coronavirus disease 2019 (COVID-19).

Tom Pendergrass, Vice Chair, asked for clarification on Senate Bill 6254. Member Cooper said the bill was necessary to implement the budget so cutoff dates don't apply.

Member Cooper gave an update on the state budget specific to public health funding. She said \$8.4 million went to support DOH's Family Planning Program, there was \$10.5 slated for backfilling Foundational Public Health services, and funding was provided for adding spinal muscular atrophy to newborn screening panel. She said there was funding for reducing suicide rates as well as funding to address facility and equipment maintenance cost increases at the public health lab.

Member Cooper said Secretary of Health and Board member, John Wiesman, has accepted a faculty position at the University of North Carolina at the Gillings School of Global Public Health. He begins his new position in January 2021, and he will work on succession planning prior to his departure.

5. UPDATE – NOVEL CORONAVIRUS (COVID-19)

Marcia Goldoft, Washington State Epidemiologist, Communicable Disease, (DOH), gave an update on the novel coronavirus (COVID-19) (presentation on file, Tab05a).

Ms. Goldoft said the situation changes by the hour and gave an update on the state and national cases. She shared details, symptoms and risk factors, as well as severity of cases. She said that testing is starting in clinical and academic centers, vaccines are under development even though no specific treatment is available. She said the World Health Organization (WHO) declared this a pandemic.

Ms. Goldoft defined containment, quarantine, and mitigation, describing what the goals of each method were. She also described healthcare system planning, including the Secretary's call to action as well as coordinating with tribes. She shared messaging to fight stigma, and opened the floor to questions.

Vice Chair Pendergrass said that a colleague of his complemented our state's response to the outbreak. He said he believes this will last for a while because it's a new virus. He asked if DOH had contacted the military as a potential source to obtain materials for care. Ms. Goldoft responded that she didn't know.

Bob Lutz, Board Member, said that Spokane did not have any cases but he anticipated there would be cases in the future. He said resources are stretched thin and that he believes the virus will continue for a long time.

Jill Wood, Board Member, said her team was already stretched thin before the outbreak and other tasks are taking longer to complete in order to respond to the virus. She asked about school closures. Member Cooper said at this time there are no school closure mandates and all planning is contingency only.

Chair Grellner said the virus response has put a strain on contract and grant work at his agency. He said it is a trying time because emergency response means normal business projects are not getting done. He said social media has added to the strain.

Member Lutz said the WHO classified this as a pandemic and shared global numbers.

Member Wood said the Governor disseminated a press release and encouraged Board members to read it.

Vice Chair Pendergrass said how much he appreciates all of the work being done by the state to respond to the outbreak.

6. PUBLIC COMMENT

Bernadette Pajer, Informed Choice Washington, stated her position about immunizations and religious exemptions. She said she supported social distancing and good hygiene to help reduce the spread of COVID-19.

Sarah Brochart, Public Health Liaison, Washington State Liquor and Cannabis Board (LCB), said her agency supports to extend the ban on the sale of vapor products that contain vitamin E acetate. She said LCB introduced House Bill 2826 this session that clarifies the authority of the LCB to regulate marijuana vapor products. She said the Board is the only agency that has authority to keep vitamin E acetate out of non-THC vapor products.

Jena Dalpez, Citizen and Executive Director of Informed Choice Washington stated her position about vaccine safety and shared a personal story with Board members. She shared information from the Centers for Disease Control and Prevention (CDC) and shared her concerns about the COVID-19 vaccine testing.

7. EMERGENCY RULE VITAMIN E ACETATE

Michelle Davis, Executive Director, directed the Board to agenda item Tab 07 (materials on file) related to the e-cigarette or vaping product use-associated lung injury (EVALI). Ms. Davis said the current ban expires March 19. She asked Member Cooper to give an update on the Department's recommendations.

Member Cooper, said the Department requested the Board to use its authority to act and consider extending the emergency rule to ban Vitamin E acetate, in response to the Governor's Executive Order.

Dr. Cathy Wasserman, Department of Health, State Epidemiologist of Non-Infectious Disease (DOH), said the Center for Disease Control and Prevention (CDC) has reported that vitamin E acetate is strongly linked to the vapor associated lung injury outbreak. She said the CDC data shows vitamin E acetate has been found by the Food and Drug Administration (FDA) in products with THC, in addition the CDC found 48 out of 51 specimens from lungs had evidence of vitamin E acetate and no other chemicals of concerns in those samples, with two exceptions. In addition from state of Minnesota 20 products seized in September 2019 evidence of vitamin E acetate in THC containing products was found, but not in the 2018 products seized before the outbreak. She said studies are continuing to look at animal models. She said because of the evidence, the Department is recommends the Board extend the rule to ban the sale of products that contain vitamin E acetate.

Vice Chair Pendergrass said there was no question that vitamin E acetate should not be used in the manufacture of vapor products. He said the Board can't keep passing emergency rules every few months, and believes that the legislature should take action. He said he supports the extension.

Lilia Lopez, Assistant Attorney General, said that to extend the rule, it would need to be based on change conditions. She indicated that there appeared to be some changes in circumstances, including: a legislative proposal that would have banned vitamin E acetate, and uncertainty about whether it would pass; LCB request legislation that has passed for THC products only that may take some time before LCB can adopt permanent rules; and Cathy Wasserman (DOH) summary of new evidence that reports that there are now 48 of 51 specimens that were found to include vitamin E acetate. Previously we were aware of 29 out 29 specimens that included vitamin E acetate. She said that in considering an emergency rule, Board members may wish to take the circumstances into consideration. She noted that the Board could also consider a subsequent emergency rule if it was initiating permanent rulemaking.

Ms. Davis asked Ms. Lopez if she had any concerns about the adequacy of the Board's authority to pursue permanent rulemaking focused solely on a vitamin E acetate ban. Ms. Lopez indicated that the Board has statutory authority to proceed with emergency rules and permanent rules on this issue.

Chair Grellner asked if the Board is considering passing another emergency rule, and a permanent rule. Ms. Davis said legislative session is nearly over and it is unclear that the bill would pass. She said that with the passage of the LCB bill, LCB would have the ability to address THC products, but rulemaking takes time and without Board action today there will be a gap. She indicated that LCB's authority is limited to THC and does not cover tobacco products.

Member Cooper said the controversy regarding the vapor products bill is the vapor flavor ban. She said every bill version she has seen contains the vitamin E acetate.

Motion: The Board adopts a second emergency rule to extend the prohibition on the sale of vapor products that contain vitamin E acetate. The Board directs staff to file a second CR-103E to extend WAC 246-80-021, effective immediately upon filing with the code reviser.

In addition, the Board initiates CR-101, on the removal of Vitamin E acetate from all inhaled products.

Ms. Lopez asked if his motion was in respect to extend the emergency rule, based on his belief that there are changed circumstances.

Vice Chair Pendergrass amended his motion to acknowledge that we now know vitamin E acetate is an important component of the lung injury, and therefore vitamin E should not be in any inhaled product.

Motion/Second: Pendergrass/Wood. Approved unanimously.

Chair Grellner asked Ms. Lopez if the Board authority met the legal requirements for considering the emergency rule extension and the additional rulemaking. Ms. Lopez said it's adequate.

Vice Chair Pendergrass asked if he should have included a separate motion for the permanent rulemaking.

Ms. Lopez said it can be done in one motion and it is clear that it is two separate things.

Chair Grellner reminded Board members about public comments on agenda item 06, and shared comments from the online chat box.

8. 2020 MEETING SCHEDULE UPDATE

Ms. Davis directed Board members to the updated meeting schedule and said the draft in the packet needs to be revised based on the Department's meeting guidance. She said the April meeting will be a virtual meeting and staff have reserved a meeting room at the Department for the public to be able to attend to the meeting.

Motion: The Board approves the proposed 2020 meeting schedule update as amended.

Motion/Second: Bessermin/Pendergrass. Approved unanimously.

9. BOARD MEMBER COMMENTS

Chair Grellner asked Board members if they wish to make comments by calling on individuals one by one.

Member Lutz said this is a challenging time but he feels encouraged.

Vice Chair Pendergrass said this is a challenging time for the public. He said he thinks the virus will be around for a long time and asked we communicate with the public.

Member Wood said rulemaking timelines have not been adjusted to compensate for the time required for COVID-19 response.

Chair Grellner said the Board speak with Stuart Glasoe and Board staff regarding rulemaking timelines. He said he supported the comments from his colleagues and said it's important to communicate effectively with the public and thanked the Department for their work on COVID-19. He said his thoughts are with Board member Jim Jeffords, and he thanked Board staff for their work.

Ms. Davis thanked Board members and participants. She said following the meeting the Board's health promotion committee meeting would begin.

ADJOURNMENT

Keith Grellner, Board Chair, adjourned the meeting at 11:23 a.m.

WASHINGTON STATE BOARD OF HEALTH

Keith Grellner, Chair

To request this document in an alternate format or a different language, please contact Kelie Kahler, Washington State Board of Health Communication Manager, at 360-236-4102 or by email at kelie.kahler@sboh.wa.gov TTY users can dial 711.

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