

WASHINGTON STATE BOARD OF HEALTH

Final Minutes of the State Board of Health

March 9, 2022

Electronic meeting via ZOOM Webinar

State Board of Health members present:

Keith Grellner, RS, Chair
Tom Pendergrass, MD, MSPH, Vice Chair
Fran Bessermin
Bob Lutz, MD, MPH
Elisabeth Crawford
Temple Lentz, MOL
Stephen Kutz, BSN, MPH
Patty Hayes, RN MN
Umair A. Shah, MD, MPH
Tao Sheng Kwan-Gett, MD, MPH

State Board of Health members absent:

State Board of Health staff present:

Michelle Davis, Executive Director	Nathaniel Thai, Communications Coordinator
Melanie Hisaw, Executive Assistant	Cait Lang, Health Policy Analyst
Kelie Kahler, Communication Manager	Tracy Schreiber, Health Policy Analyst
Stuart Glasoe, Health Policy Advisor	Lilia Lopez, Assistant Attorney General
Samantha Pskowski, Health Policy Advisor	
Kaitlyn Donahoe, Health Policy Advisor	

Guests and other participants:

Chris Spitters, MD, MPH, Snohomish County Health Officer
Michele Roberts, Department of Health
Dani Toepelt, Department of Health

Keith Grellner, Board Chair, called the public meeting to order at 9:30 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.

Michelle Davis, Board Executive Director, announced that Board staff had just received updated federal guidance yesterday regarding Item #11, the Emergency Rule for Notifiable Conditions COVID-19 reporting. Ms. Davis recommended the board to table the discussion today and move it to the April 13 Agenda.

1. APPROVAL OF AGENDA

Motion: Approve March 9, 2022 agenda, with amendment to table Agenda Item #11 to the April 13, 2022 Board meeting.

Motion/Second: Member Lentz/Member Bessermin. Approved unanimously

Stephen Kutz, Board Member, asked if we can discuss in-person meetings, given the new climate. Ms. Davis said staff has yet to receive updated public meeting guidance. Once that happens, she will share with board members to plan an in-person meeting.

2. ADOPTION OF JANUARY 12, 2022 MEETING MINUTES

Motion: Approve the January 12, 2022 minutes.

Motion/Second: Member Kutz/Vice Chair Pendergrass. Approved unanimously

3. BOARD ANNOUNCEMENTS AND OTHER BUSINESS

Michelle Davis, Board Executive Director greeted the Board and directed Board members to materials in their packets (on file). Ms. Davis said the Governor appointed Patty Hayes to the health and sanitation position that was previously held by Jill Wood. She announced that LinhPhung Huynh will be the new Manager for the Health Disparities Council, effective March 16. Ms. Davis shared other updates including notes from the recent Health Promotion Committee meeting, and an update from DOH on the implementation of the food code. She said when the Board adopted the revised food code in October 2020 it provided a delayed effective date of March 1, 2022 to help the state continue the active pandemic response. She said as part of its implementation, DOH is working with local health and the hospitality industry to focus on education efforts through August 31 of this year. She discussed rulemaking items including the CR 101s, for shellfish and newborn screening (OTCD) Ornithine transcarbamylase deficiency. She discussed the order for adoption for rules implementing ESHB 1551 from the 2020 legislative session and said the rulemaking focused on aligning the rules with state law, which modernized the state's control of communicable disease laws by ending statutory HIV/AIDS exceptionalism, reducing HIV-related stigma, defelonizing HIV exposure, and removing barriers to HIV testing. She noted that other meeting materials include the responses to the petitions for rulemaking that Board considered in January. Ms. Davis said March 10 is the last day of the 2022 legislative session and later this month she will send Board members a written legislative update summarizing the bills that passed this session and their impacts to the Board. She noted one piece of legislation amended the Open Public Meetings Act, and another will enable agencies to provide stipends to public members of committees.

Ms. Davis said staff completed five Health Impact Reviews this legislative session. She also said the last review the Health Impact Review (HIR) team completed was for ESHB 1852, concerning language requirements for prescription drug labels. She said staff also provided two presentations during session. She said one presentation, at the request of Senator Clair Wilson was to the Senate Human Services, Reentry and Rehabilitation Committee was on the findings from the HIR on HB 1312, concerning solitary confinement, which they completed during the 2021 Interim. Ms. Davis said the other presentation was an overview of the Board, the Council, and HIR's for the Washington Academy of Family Physicians during their Family Medicine Advocacy Day. She said the group was particularly interested in learning about how staff consider equity in HIR's. Ms. Davis noted that the HIR team will provide their annual update to the Board at a future meeting.

Ms. Davis said the Technical Advisory Group (TAG) that the Board and Department co-convened to evaluate the COVID-19 vaccine completed its work February 24. She said

staff will be bringing the TAG's recommendation to the Board for its consideration at the Board's regularly scheduled April 13 meeting.

4. DEPARTMENT OF HEALTH NOVEL CORONAVIRUS (COVID-19) UPDATE AND OTHER UPDATES

(note: this item switched with Item 5)

Umair A. Shah, Secretary of Health and Board Member, thanked everyone for coming together on the pandemic. Member Shah shared the department's update on the state of COVID nationally and in Washington State (see materials on file). Member Shah said that COVID hot spots have declined significantly since January 2022 across the country and Washington State. He said that the omicron wave was the sixth COVID wave resulting in a very quick increase of cases and hospitalizations followed by a quick significant decrease in cases and hospitalizations across the country and Washington State. He discussed the National COVID-19 Preparedness Plan and the Centers for Disease Control and Prevention's (CDC) recent response recommendations on contact tracing and metrics. He further discussed key considerations including the State's focus on vaccinations for preventing severe disease and other layered prevention strategies.

Tao Sheng Kwan-Gett, Chief Science Officer, discussed the community COVID levels and indicators and discussed recent epidemiological data. He reported that until recently, the main metric from the CDC had been community transmission as indicators used to monitor COVID-19. He said the evolution of the CDC's recommended COVID-19 metrics and indicators for public health interventions and disease prevention. Healthcare settings, transportation settings, and schools have their own guidance. He said the CDC-calculated COVID-19 community levels for the country and the State. He shared differences between CDC data and Washington State data and explained that the CDC had used a technique called "web scraping" via implementing an algorithm and did not consider that Washington State continually updates and revises its data. He said DOH is working with the CDC to calculate community levels to accurately reflect COVID-19 in Washington State. He also discussed COVID-19 variant tracking efforts in the State and the impact of vaccinations in preventing hospitalization for COVID-19.

Michele Roberts, Assistant Secretary, Prevention and Community Health, discussed the state of vaccine distribution in Washington State. Ms. Roberts also explained eligibility and recommendations for booster doses and shared booster dose data.

Member Shah concluded the presentation with current needs of the healthcare system, the new mask guidance beginning March 12, and discussed Washington State's roadmap for coexisting with COVID-19. He said the state is focused on communications; vaccines, testing, and treatment; data monitoring; and health system capacity.

Chair Grellner thanked the panel and opened the floor for questions.

Stephen Kutz, Board Member, asked about the need for continuing boosters, the severity related to gaps related to inputting COVID-19 data, what efforts were being made to have vaccines available in primary care settings; and the vaccines for children program.

Member Shah stated that the goal is to continue to remind people about the importance of boosters and reiterate who meets eligibility for boosters. He said if someone is eligible, they should get a booster dose, especially seniors and people with a higher burden of risk. He said that the goal is to continue to encourage the vaccine be available where patients were interacting with the system.

Member Kutz clarified that he was interested in the boosting the booster. He also asked about WISHA, enforcement actions, and the requirement to protect the workforce. He asked about any requirements that may be put into place.

Member Shah discussed that recommendations would continue to be forthcoming. Ms. Roberts reported that Pfizer and Moderna have more data forthcoming, which is expected in the Fall.

Ms. Roberts responded to Member Kutz's question regarding data. She reported that the Washington State Immunization Information System (IIS) knows what data is missing and she there is good quality control, but there are some federal sources are missing. She acknowledged the strain at the local level. She discussed challenges with data exchange between Idaho and Oregon and stated that Washington is ready for data sharing. She commented that data sharing between border communities over state borders is a high priority for border communities.

Ms. Roberts addressed Member Kutz's question regarding vaccines in primary care settings. She stated that moving vaccination to primary care is one of the goals of the Department's goals this year and they are looking to increase and transition vaccination to the primary care systems She discussed that the primary care system was taxed during the COVID-19 Omicron variant. Ms. Roberts also addressed Member Kutz's question regarding vaccines for children reporting that 2/3 of providers are registered as COVID-19 vaccine providers and the Department was working on outreach and assistance to see how to assist in provider-level vaccine information.

Dr. Kwan-Gett discussed primary care work and the effort to increase provider capacity through the "Power of providers" program. Dr. Kwan-Gett further commented on the healthcare workforce stating that there is a workforce issue in the primary care system. He said that there are not enough medical assistants and staff to administer vaccination and that there are a lot of workforce issues to address that will in turn address vaccine accessibility issues.

Chair Grellner thanked the panel for their leadership. He gave information and instructions on the upcoming public comment and allotted each commented one minute. He reported the Board had received over 1,200 pages of public comment.

5. BRIEFING – [LOCAL BOARD OF HEALTH COMPOSITION](#), CHAPTER 246-90 WAC
(note: this item switched with #4, the DOH update)

Temple Lentz, Board Member, discussed the Board's rulemaking related local board of health membership and the development of a chapter 246-90 WAC. She gave an overview on Engrossed Second Substitute House Bill 1152 (E2SHB 1152) that creates new requirements for local board of health membership and directs the Board to adopt rules for

the selection and appointment of non-elected members. She updated the Board on the activities to date and explained there will be no vote taken on this item today.

Kaitlyn Donahoe, Board Staff, provided additional detail on E2SHB 1152, including the Board's timeline and statutory requirements for rulemaking. Ms. Donahoe stated that the Board's rules must go into effect no later than July 25, 2022. She reported that CR-102, Proposed Rule, was filed on February 25, 2022 and that formal public comment period is open through March 30, 2022.

Samantha Pskowski, Board Staff gave an overview of the community engagement strategy for this rulemaking project. She discussed public engagement efforts, feedback received, and how comments were incorporated into the draft rules. Ms. Pskowski stated that interested parties will continue to be consulted as the rulemaking process continues. Ms. Pskowski gave a high-level overview of the proposed rule and tentative rulemaking timeline. She noted that local boards of health are expected to comply with E2SHB 1152 by July 1, 2022, and that Board staff hope to have rules go into effect by that date as well.

Chair Grellner called for questions from board members.

Stephen Kutz, Board Member commented that the Suquamish Tribe asked Member Kutz to propose additional language in the draft rules to include "usual and accustomed areas/ceded territory" in reference to the requirement of tribal representation on local boards of health. Ms. Pskowski suggested that Member Kutz and the Tribe should submit comments through the formal public comment process and that regarding that request, she would need research if such a change was within the Board's statutory authority.

Chair Grellner also commented that the Board's statutory authority is limited, as the directive is just to clarify legislation through rules. He noted that the proposed rules are on the Board's website and encouraged comments to be made formally for rulemaking consideration.

Elisabeth Crawford, Board Member said that she is very encouraged by the level of engagement in the rulemaking so far. She asked for clarification about the exception for local boards of health with community advisory groups. Ms. Donahoe responded and said that state law allows for local health jurisdictions who had a local public health advisory or committee that meets the standard already in place or by a certain date may retain their current composition. She stated that in the future, should the composition change, the local health jurisdiction would be required to adhere to new rules.

The Board took a break at 11:30 a.m. and reconvened at 11:45 a.m.

6. PUBLIC COMMENT

Shawna Franklin said to consider the impact of vaccines on children with facts, including 0 mortality rate of children under 18. She talked about rates of myocarditis, especially in boys. She said the risks outweigh the benefits of the vaccine, and clear signals of adverse effects are not rare.

Joe Kunzler, said let's get COVID dealt with and mask wearing and getting vaccinated is the least one can do. He said to think of those who need public health such as seniors, disabled people and others. He applauded Dr. Alison Berry. He said he's grateful for House Bill 1329 regarding the law for public meetings. He asked everyone to get vaxed and boosted.

Zana Carver, Dr. Carver, addressed the slide in an earlier presentation that children have a five times higher risk for being hospitalized. She stated her position that is fraud and a lie.

Jennifer Matthews, said there's been a significant shift in COVID the last couple weeks. She said we're talking about adding a vaccine when the vaccine was created for a variant that has been out the last couple years. If we move towards science, we need to do that and not be disconnected from the facts. She disagrees with the risk vs. reward for children.

Lara Gabriel, RN, thanked the Board and urged the Board to accept the petition for rulemaking on school entry immunization requirement petition that requires an EUA product to pass phase 3 clinical trials. She said we need to act now in the current situation re: EUA, saying the Florida Surgeon General has recommended no vaccination following the high rate of myocarditis in children and teens.

Nina Wasankari, spoke in support of the petition that prohibits the inclusion of any EUA product which has not yet completed Phase 3 clinical trials. She said we do not know the long-term effects of the COVID vaccine, and she talked about a report clearly showing more risk than benefit, and said there will be adverse societal effects if the vaccine is added.

Kristin Kirby, community member in King County, mother and aunt, does not recommend adopting the COVID-19 shot. She talked about prevention, low hospitalization rates, neurological side effects and menstrual side effects. She said the TAG keeps saying they don't have the data.

Jodi Wilke, thanked everyone and said her concern is the information accessed from the TAG is not up to date and not what's shown around the world. She said that the TAG says they don't have the data, and we hear the data is being suppressed by CDC. She asked DOH to de-stigmatize those not vaccinated in the same way as they have de-stigmatized and protected those with HIV. There should be a movement of de-stigmatizing those that read the data.

Bob Runnells, Vancouver Washington, a risk management analyst, asked the Board to explicitly and transparently calculate and compare the number of kids that needed vaccinated before the next meeting. He talked about NNT that measures the number of treatments that helps prevent a case. He said measures show that 700 people need to be vaccinated to stop a case and measures of death prevention are around 16,000. These are tools needed for policy makers.

Lisa Smith, mother of three, said key data points regarding COVID-19 are that 95% or more that have died, had high numbers of morbidity. She said the vaccine is not one and done like other vaccines, it's experimental and not officially approved. Her brother had myocarditis after his second shot, and her friend had an issue from the vaccine. Her

children had COVID, and just had a runny nose. She said the benefits don't outweigh the risks.

Susie Olson Corgan, thanked the Board, and the TAG for not recommending adding the jab, saying children have zero relative risk. She trusts her primary care doctor and said one size fits all is dangerous. She said over 85 percent have already received one dose. She said to look at the public school enrollment and it will continue to drop if the shot is required.

Janell Hulst, a Kitsap County mother of four and business owner, talked about the shot, EUA and FDA. She said requiring the shot is unethical and against the Nuremberg Code. She said the shot is based in propaganda, look at VAERS studies. She thanked the TAG for voting to not recommend the shot.

Beth Martin, a mother of two young children in Seattle, asked the Board to move forward with the TAG recommendation to not add the shot to the schedule. She said there's a lot that we do not know, especially in school settings, and there is so much more that schools need to be focused on. She said she is concerned with the lack of long-term safety data and said this is a personal decision within a family and their physician.

Elizabeth Rohr stated her opposition to adding the COVID vaccine to the immunization schedule. She said the Local Health Officer (LHO) has the authority and can use controlled measures to close schools. Her concern is the power of LHO's regardless of exemptions. She said we can use our own informed consent, and she does not like the terms the Board is using such as bio surveillance.

Linda Massman thanked the Board and said the statement is very clear, do not advocate adding the vaccine to the schedule. She talked about Pfizer data, at best they found the vaccine might help prevent mild disease, but it doesn't tell about the spread and deaths because that does not exist. She said there's too little caution and too much optimism.

Sharon Hochberg said she is against the vaccine mandate for K-12 kids. She referred to the Pfizer document, with over 1,200 known side effects, including myocarditis. She said VAERS recorded over 24,000 vaccine deaths and other hospitalizations and asked the Board to consider science and TAG recommendations.

Alise Sanchez, is a health care worker for ten years and has a child going into school. She said the report of deaths is 15 out of 1.8 million children, and COVID is not a risk to her child and requested it not be required.

Shelly Burt, a foster parent, said she opposes requiring a vaccine. She asked DOH to consider at-risk children with special needs.

Leslie Peterson, thanked the Board and said her concern is on the efforts for Regional Health Districts that the Governor has worked on in the last two years. She believes the government works best when closest to the people it serves and said to let us have our county health departments with local people.

Philumina Johanni, mother and professional said vaccines pose an amazing threat. She urged the Board to adopt the TAG recommendation. She provided statistics and said the numbers show something is drastically wrong, at this moment it's political and thanked the TAG for the right decision.

Tami Kee said her children had COVID, and it was mild. She said to add a vaccine with side effects to children with a natural immunity makes no sense, natural immunity works and is better. She said the shot has been pushed hard and it's caused more problems than it's helped.

Michael Keaton, Puyallup school board member, said as an F16 pilot, his concern was to bring his wingman back safely. Now his concern is the safety of his students and staff. He said since we don't know all the side effects, risk vs reward is upside down. If he is unable to enforce parental choice, he would need to resign.

Sean Davis, has two children in public school, and thanked the TAG for coming to the conclusion for not recommending the vaccination to the schedule. He said he believes the Board members are good people, but they are working with a different set of facts. Everyone has an agenda at the end of the day, and he asked the Board to oppose a vaccine mandate and end vaccine apartheid. Coercion is not choice.

Mark Garrett thanked the Board, department and legislature, and especially grass roots HIV advocates who have worked for the past decade to de-criminalize and de-stigmatize HIV. The COVID-19 pandemic has stirred awareness of public health to maximize control of future viruses. He remains open minded and curious to fight misinformation and to promote public health.

Janine Burkhardt, said she is concerned that many children already had COVID and have naturally acquired immunity, so they don't need to be vaccinated. She asked why vaccinations should be forced on children that are already immune?

Hannah O, is a mother of two school age children, and said even the Director of the CDC said that science is nuanced. She questioned why require this vaccine when we don't know the risks? She said rushing ahead does not make sense and asked why we can't wait.

Jenny Crichton, thanked the Board and expressed her opposition to a vaccine mandate for children. She said she homeschools her five children and is currently a private school teacher. She doesn't see the necessity of this coercion on children. She said she isn't anti-vax, but pro medical freedom, and believes in educated consent. She said she fears the long-term effect for a short-term situation that we know little about. The risk to benefit ratios are clear, there is no need to give children the vaccination, especially with information that CDC has withheld.

Jason Oberle, stated his opposition to requiring experimental mRNA shots to children and anyone else, saying the makers of these shots have said they do not prevent infection or the spread of this virus. Mr. Oberle said if you want to require something like this, then consider children that do not take enough vitamins, do not exercise and are overweight. These are all know factors that affect health.

Chair Grellner closed public comment at 12:30 p.m.

7. RULEMAKING PETITIONS – THE BOARD HAS RECEIVED REQUESTS TO REPEAL WAC 246-100-040, [PROCEDURES FOR ISOLATION OR QUARANTINE](#) AND WAC 246-100-070, [ENFORCEMENT OF LOCAL HEALTH OFFICER ORDERS](#)

Bob Lutz, Board Member, provided a brief summary of the requirements for state agencies to respond to petitions under the Administrative Procedures Act. He provided further background and explained that the Board received three petitions related to repealing sections of rule related to procedures for isolation and quarantine as well as enforcement of local health officer orders. Member Lutz then explained the purpose and scope of these chapters of rule as well as the Board's authority to establish and maintain the rules. Member Lutz introduced Dr. Chris Spitters to provide comments and answer questions from his perspective as a local health officer.

Chris Spitters, Local Health Officer, discussed his experience as a local health officer in multiple jurisdictions and his use of isolation and quarantine procedures. He said these sections of rule remain an essential ingredient in tracking and preventing communicable disease and are used in emergencies. Dr. Spitters explained that in his tenure as a local health officer, he has only invoked isolation and quarantine orders once, and that was in a limited scope during the COVID-19 public health emergency. He explained that without enforcement support and penalties, he does not know how local health can curtail dangerous communicable diseases with uncooperative parties. Dr. Spitters said that under non-emergency circumstances, he would typically obtain court orders to supplement and reinforce provisions related to law enforcement support.

Member Lutz thanked Dr. Spitters and reiterated that local health officer powers are in state law. He commented that the primary duty of the local health officer is to protect the public and these petitions do not help the public's health.

Patty Hayes, Board Member thanked Dr. Spitters and commented from the perspective of a former health administrator that she does not support moving forward with these petitions. She said that the current rules provide due process procedures which are an essential part of communicable disease work.

Elisabeth Crawford, Board Member said that Dr. Spitters is her health officer and a well-respected member of the community. She said she does not support these petitions because of the due process provisions contained in rule and the protections they provide to public health. Member Crawford explained that these procedures were put in place to help experts be able to handle spread of communicable disease and imminent threats to public health.

Stephen Kutz, Board Member said that in his experience with isolation and quarantine in the last 30 years, he has never needed law enforcement support with compliance. He said the rules reinforce the seriousness of community spread of disease, particularly drug-resistant strains of disease. He asked Dr. Spitters if information about legal counsel is provided to someone if they refuse to cooperate with local health. Dr. Spitters affirmed that all information about the right to legal counsel is contained in the health order.

Tom Pendergrass, Vice Chair discussed the history of the Board's authority for isolation and quarantine procedures dating back to establishment of the Board in the state constitution. He shared a personal anecdote regarding an individual requiring isolation and quarantine for multidrug-resistant tuberculosis during a family vacation and said that he supports declining these petitions.

Motion: The Board declines the petitions to initiate rulemaking to repeal WAC 246-100-040 and -070 for the reasons articulated by Board members and directs staff to notify the requestors of the Board's decision.

Motion/Second: Pendergrass/Kwan-Gett. Approved unanimously

8. RULEMAKING PETITIONS – THE BOARD HAS RECEIVED REQUESTS TO AMEND WAC 246-100-036, RESPONSIBILITIES AND DUTIES OF LOCAL HEALTH OFFICERS

Bob Lutz, Board Member, reiterated the requirements in the Administrative Procedures Act and said the Board received three petitions for rulemaking to amend the rules relating to local health officer responsibilities and duties. Member Lutz explained that two of the petitions request amendments to the rules to require local board of health approval for all local health officer orders regarding the control of communicable disease that are not aligned with state department of health guidance. He said the third petition requests amendments to allow the local board of health to veto local health officer orders. Member Lutz also described the statutory authority for these rules, as well as the statutory authority for local health officer actions.

Chris Spitters, Local Health Officer explained that the state department of health has communicable disease guidelines on many but not all conditions of concern. He said that local health departments typically enact communicable disease measures aligned with guidance from state health department experts, and that it is rare for these measures to be more restrictive than that guidance. Dr. Spitters said that in an emergency, such guidance may not exist, or existing guidance may not be up to date with current evidence. He said in delaying local health officer orders via approval from the local board of health would inhibit local health departments' ability to prevent transmission of disease. Dr. Spitters explained that local boards of health and locally elected officials often work with local health officers on communicable disease measures during an emergency, such as the COVID-19 pandemic. He also mentioned that local board of health oversight of a local health officer is already established in state law.

Stephen Kutz, Board Member said he has deep respect for physicians that agree to serve as a local health officer. He said many times the local health officer can provide relief of stringent action in addition to enacting communicable disease measures. Member Kutz said he has always respected the position the health officers were in to take action based on the health of the community.

Tao Sheng Kwan-Gett, Chief Science Officer and Secretary's Designee thanked Dr. Spitters for sharing his expertise as Board members consider these petitions. He said these

petitions are unnecessary and harmful, and that he is concerned that policies suggested by these petitions would inhibit the timeliness of public health interventions. Dr. Kwan-Gett asked Dr. Spitters to share an example of timely intervention. Dr. Spitters recalled a recent returning traveler from a country where measles is still endemic. He said the individual's doctor diagnosed their child with measles and directed them to seek care. Dr. Spitters said local health had a short window to identify who might have been exposed or susceptible to measles, and who may need to quarantine to mitigate disease spread. He explained that local health only has hours to act and intervene to prevent community exposure, and that if local board of health approval was required to act, local health would lose valuable time and could result in an outbreak that could last weeks or months.

Chair Grellner added that the statutory authority providing local health officers this authority is extremely prescriptive and details the qualifications that health officers must have in order to serve in that position. He said that in his opinion, there is no better person to make these kind of decisions.

Motion: The Board declines the petition to initiate rulemaking to repeal WAC 246-100-036 for the reasons articulated by Board members and directs staff to notify the requestors of the Board's decision.

Motion/Second: Kutz/Pendergrass. Approved unanimously

9. RULEMAKING PETITIONS – THE BOARD HAS RECEIVED A REQUEST TO ADOPT A NEW RULE IN CHAPTER 246-105 WAC, IMMUNIZATION CRITERIA, CHILD CARE AND SCHOOL ENTRY

Tom Pendergrass, Board Vice Chair, said this petition is similar to the petition the Board received and reviewed at their January 2022 meeting. He said the petition requests the Board adopt permanent rules that would prohibit any product with an Emergency Use Authorization (EUA) or any licensed product formulation which has not yet completed Phase 3 clinical trials from inclusion in the rule. Vice Chair Pendergrass recapped the action the Board took in January and the rationale. He discussed federal Food and Drug Administration (FDA) approval and EUA for COVID-19 vaccines. Vice Chair Pendergrass voiced his concern that acceptance of this petition would result in a restriction of future Board action. He said that he believes the Board's technical advisory group (TAG) process for considering additional products in chapter 246-205 WAC is durable, open, and dedicated to understanding the science and social interactions from every possible angle. Vice Chair Pendergrass encouraged the Board to decline this petition once again and encouraged discussion by the Board.

Stephen Kutz, Board Member reminded Board members of prior EUA vaccine use, citing the human diploid rabies vaccine as an example. He said physicians have the ability to use medications that are not fully approved by the FDA, and that there is precedent for the use of EUA products. Member Kutz said he is in favor of declining the petition.

Vice Chair Pendergrass said that he spent most of his career as a pediatric oncologist and is very familiar and engaged in what is done to develop a new agent to treat a major problem that is a threat to life. He said that clinical trials must be completed, and he understands some of the concern of the petitioners; however, when a million people have died, he said sometimes we need to do things a little quicker. Vice Chair Pendergrass urged Board members to vote to deny the petition. Elisabeth Crawford, Board Member said she supports denying this petition, and that instilling a rule like this would be a step backward in innovation in medical treatment and prevention. She noted that biology moves much faster than bureaucracy.

Motion: The Board declines the petition to initiate rulemaking to prohibit certain products from inclusion in chapter 246-105 WAC for the reasons articulated by Board members and directs staff to notify the requestor of the Board's decision.

Motion/Second: Kwan-Gett/Lentz. Approved unanimously

The Board recessed for lunch at 1:16 p.m. and reconvened at 2:00 p.m.

10. BRIEFING – KEEPING OF ANIMALS, WAC 246-203-130

Stuart Glasoe, Board Staff introduced the briefing, saying it involved no formal action by the Board and noting that the rule language and supporting analyses were still draft, undergoing final review and internal processing prior to filing the CR-102, proposed rule. He said the presentation would cover (1) background and milestones of the rulemaking; (2) Board policy direction and objectives of the rulemaking; (3) design and content of the rule, (4) important misconceptions of the rulemaking; and (5) the CR-102 filing and anticipated next steps. (presentation on file)

Member Kutz acknowledged the years of work on the rule, said every local health jurisdiction has its own issues, and asked if the rule offers enough backbone for jurisdictions to enforce things at the local level. Mr. Glasoe said he thinks so. Member Kutz asked if the rule backs jurisdictions into a corner where they must do something? Mr. Glasoe said he doesn't think so. He said the rule adds no new authority and jurisdictions will have to make good, smart choices about how involved they want to be in different issues, which will be mainly complaint driven. The rule provides a tool to take action as they see fit in their local community. Every corner of the state is different culturally, politically, environmentally, and jurisdictions will have to make choices about how they implement and use this tool.

Vice-Chair Pendergrass asked about variance between jurisdictions with the rule written at such a high level and differences in issues—such as dairies in Yakima County—that could potentially result in highly permissive and highly restrictive jurisdictions close to one another. Mr. Glasoe said that drilling down on details for a more prescriptive rule proved difficult and was never the vision. He said the rule could be written differently if written for the purpose of ongoing program implementation such as Board rules for food, water recreation, and drinking water systems which are super detailed. He said this rule, in

contrast, is patterned after the sister rule on Disposal of Dead Animals. It spells out a few dos and don'ts, and leaves it to local health jurisdictions to be involved in big issues as they see fit, such as drinking water issues in the Sumas-Abbotsford aquifer in Whatcom County and in the Lower Yakima Valley. Local health officers can be involved in such issues in partnership with sister agencies such as Department of Ecology and Department of Agriculture.

Member Hayes said she liked the rule's shift in focus from keeping of animals to animal waste and reiterated that this rule is about work at the local level responding to issues in a complaint-driven process. She said the approach and the level of detail is a good sweet spot for local health to point to something when needed to address issues. She said it's good direction and thanked the chair and staff for the work.

Member Kutz noted that the rule is not written to address big commercial operations that have other oversight authorities but added that that doesn't mean the oversight authorities are doing what some people think they should be doing. Stuart agreed and said he doesn't believe Board authority extends to animal facilities, such as dairies, kennels, and commercial stables. The Board has authority for animal waste and related implications and impacts.

Chair Grellner said he agrees with the approach and said it's modernization of a rule that's been on the books since the 1960s. He said the rule helps people know what the standards are and doesn't step on the toes of agencies that have responsibility regulating large operations.

11. EMERGENCY RULE – [NOTIFIABLE CONDITIONS, COVID-19 REPORTING](#), WAC 246-101-017 – (Tabled and moved to April Board meeting in the approval of the agenda)

12. DEPARTMENT OF HEALTH REQUEST FOR DELEGATION OF RULEMAKING FOR EMERGENCY RULES FOR [VIBRIO PARAHAEMOLYTICUS CONTROL PLAN](#), WAC 246-282-006

Stuart Glasoe, Board Staff introduced the topic and accompanying material. He summarized the complementary roles and authority of the Board and Department of Health regulating the sanitary control of molluscan shellfish, as well as Board authority delegating rulemaking authority to the Department. He explained that the Board initiated rulemaking in February 2022 to update chapter 246-282 WAC, Sanitary Control of Shellfish, including the Vibrio Parahaemolyticus (Vp) Control Plan. He briefly explained the health risks of Vp and heat wave conditions that occurred early in the 2021 VP control season prior to the start date (July 1) of the Vp control season's strictest time-to-cooling requirements established in rule. He said the Department was requesting delegated emergency rulemaking authority to amend the rule if heat wave conditions occur prior to July 1 of the Vp control season and prior to completion of the concurrent rulemaking to revise chapter 246-282 WAC. Dani Toepelt, Department of Health followed with a presentation explaining in greater detail the health risks of Vp, the 2021 heat wave conditions, Vp illness data, and the purpose and need for the emergency rulemaking delegation. (presentation on file)

Vice-Chair Pendergrass asked what “monitored temperature” applies to. Ms. Toepelt said the monitored temperature is either the water temperature or the meat temperature. Vice-Chair Pendergrass asked why we should do emergency rulemaking and not just expand the harvesting period to cover such conditions. Ms. Toepelt and Mr. Glasoe combined to explain that the rulemaking on the chapter, which includes work on the Vibrio Control Plan, will involve work with partners to better address such issues during the Vibrio control season. Until that work is completed, delegated emergency rulemaking authority is needed to allow the Department to act quickly, take emergency action, and communicate with growers if heat-wave conditions occur early in the Vibrio control season.

Member Kutz asked if the monitoring shows high Vibrio numbers, can that be used to close beds or only to regulate time-to-cooling? Ms. Toepelt said the monitoring tracks three genetic markers and there’s not a perfect formula, not consistent science behind those numbers to use as a threshold for closure. Member Kutz said he understood the need for quick action on such issues.

Member Bessermin expressed her appreciation for the work and made the motion.

Motion: The Board delegates to the Washington Department of Health emergency rulemaking authority to amend WAC 246-282-006 to allow enforcement of the strictest time-to-cooling standards in the event heat-wave conditions occur prior to July 1 of the Vp control season and prior to completion of concurrent rulemaking to revise chapter 246-282 WAC.

Motion/Second: Member Bessermin/Member Kutz. Approved unanimously

Member Crawford asked if staff have already started talking to stakeholders about the best way to approach rulemaking. Ms. Toepelt said yes, there have been preliminary conversations with tribes and with the Vp advisory committee (VpAC). Member Crawford asked for a timeline for the larger rulemaking. Ms. Toepelt said about two years.

Vice Chair Pendergrass questioned whether the calendar-based motion sufficiently suited the Department’s needs to use temperature-based criteria in its work. Member Kutz said he thought the motion worked because it allows action outside the dates when action is already allowed. He also added that he thinks this issue will be a national issue, not just an issue in Washington. Ms. Toepelt explained that each state has its own Vibrio rule and we are seeing different strains of Vibrio on the horizon. Member Kutz asked about interstate commerce as it relates to Vibrio and Ms. Toepelt reiterated that states have their own plans based on the federal model ordinance.

Member Hayes voiced her understanding that the action would allow the Department to be nimble and flexible to act if needed. Ms. Toepelt said yes. Member Hayes said other issues can be addressed in the larger rulemaking and encouraged further input from the Board during the process. Mr. Glasoe said staff will keep members updated and invited member Hayes to serve as sponsor for this rulemaking. Member Hayes said she could serve as rule sponsor.

Chair Grellner voiced support for the motion and its benefit protecting harvesters from product being recalled and consumers from becoming sick from bad product. The emergency rulemaking authority can serve as a bridge to completion of the larger rulemaking in the future. He said he thought the approach was smart and savvy.

13. BOARD MEMBER COMMENTS

Keith Grellner, Board Chair called for any general comments.

Member Hayes talked about an article titled, Getting to and Sustaining the Next Normal: A Roadmap for Living With Covid – The Rockefeller Foundation. Ms. Davis will forward it to board members. She also talked about ventilation, and how COVID potentially will be integrated into a seasonal approach.

Vice Chair Pendergrass specifically thanked Ms. Pskowski and Ms. Febach for so much work and time in preparation for the TAG. He expressed his gratitude for 18 members of the public that spent 3 days in discussion on COVID-19. He said the Washington State Board of Health is in the State Constitution. He talked about the blending of education during this discussion and expressed his hope for being open, transparent, and engaging in consideration of any vaccine for requirement for school entry.

He said one TAG member left due to a threat to her life. The members were a broad group looking at the science of the vaccine. The TAG blended the medical and educational sides. He expressed his appreciation to the Department of Health for outstanding presentations. Vice Chair Pendergrass said he hopes this is a rebuilding of trust. He said the TAG was a heterogeneous group, the trust in the group was palpable and they did well. He said they struck a chord, over 10,000 pages of public comment was submitted to review. He said most public comment was respectful, and there were some threats. Vice Chair Pendergrass thanked TAG members for the extraordinary amount of work to consider a vaccine in the middle of a pandemic. He urges parents, members of the public and children to get vaccinated against this terrible virus.

Member Kutz thanked Vice Chair Pendergrass for his work, on behalf of the board. He said this is a complex issue, not just data on positive effects, but also other data and a scientific view of all aspects.

Chair Grellner thanked Vice Chair Pendergrass and Member Bessermin for staying on the board past their appointments. He said their expertise has proven invaluable and he thanked them for their extra time. He thanked Ms. Davis and all her staff for the extra work, especially over the last few months.

Member Bessermin welcomed Member Hayes, saying her expertise will be valuable on the board. Member Bessermin said she recently saw Mary Selecky, and she is doing well working with Providence.

Vice Chair Pendergrass said this is a volunteer board, and staff are paid. He said we appreciate when people are nice, and we don't appreciate getting threatened or yelled at. Member Bessermin agreed and expressed her sadness that the Board staff has had to deal with this.

Chair Grellner said that respect and compassion are the rules of the day as we move from the mask mandate. He said it has been a long two years and many of us are ready to move forward, while others have compromised health. He said if we see others with masks, hopefully they are treated respectfully, we don't know their situation.

Member Kutz said he's seen losses in his community due to Kratom, an unregulated substance. He thinks it would warrant for the Board to look at.

ADJOURNMENT

Keith Grellner, Board Chair, adjourned the meeting at 3:15 p.m.

WASHINGTON STATE BOARD OF HEALTH

Keith Grellner, Chair

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