

# WASHINGTON STATE BOARD OF HEALTH

## Final Minutes of the State Board of Health

October 8, 2024

Hybrid Meeting

ASL (or CART) and Spanish interpretation available

Hilton Garden Inn Yakima

Cascade Ballroom

401 E. Yakima Avenue

Yakima, WA 98901

Virtual meeting: ZOOM Webinar

### State Board of Health Members present:

Patty Hayes, RN, MSN, Chair

Kelly Oshiro, JD, Vice Chair

Stephen Kutz, BSN, MPH

Kate Dean, MPA

Socia Love-Thurman, MD

Dimyana Abdelmalek, MD, MPH

Tao Sheng Kwan-Gett, MD, MPH, Secretary's Designee

Michael Ellsworth, JD, MPA, Secretary's Designee

### State Board of Health Members absent:

Umair A. Shah, MD, MPH

Melinda Flores, MHCM

Paj Nandi, MPH

### State Board of Health staff present:

Michelle Davis, Executive Director

Melanie Hisaw, Executive Assistant

Michelle Larson, Communications  
Manager

Anna Burns, Communications Consultant

Heather Carawan, Communications  
Consultant

Molly Dinardo, Health Policy Advisor

Shay Bauman, Health Policy Advisor

Jo-Ann Huynh, Administrative Assistant

Lilia Lopez, Assistant Attorney General

Hannah Haag, Community Engagement  
Coordinator

Ashley Bell, Equity & Engagement  
Manager

Cait Lang-Perez, Health Policy Analyst

Lindsay Herendeen, Health Policy Analyst

Miranda Calmjoy, Health Policy Analyst

LinhPhung Huynh, Health Disparities  
Council Manager

Esmael López, Health Disparities Council  
Lead Community and Tribal Engagement  
Coordinator

Gavin Rienne, Health Disparities Council  
Social Epidemiologist

Andrew Kamali, School Rules Project  
Manager

Nina Helpling, School Rules Project Policy  
Advisor

Mary Baechler, School Rules Project  
Community Engagement Coordinator

Marcus Dehart, School Rules Project  
Communications Consultant

Kelly Kramer, Newborn Screening Project  
Policy Advisor

### **Guests and other participants (in person):**

Dave DeLong, Department of Health  
Andre Fresco, Yakima Health District  
Joe Laxson, Department of Health  
Jeff Riggins, Suquamish Tribe  
Anna Sandidge, Greater Health Now Health Transformation  
Ofelia Romero, Entrust Community Services  
Gerald Braude, Guest  
Brooke Hanley, NAC Architecture  
Ken Wilkinson, Yakima Parks & Recreation  
Bill Osmunson, WA Action for Safe Water

Patty Hayes, Board Chair, called the public meeting to order at 9:30 a.m. and read from a prepared statement (on file).

#### **1. APPROVAL OF AGENDA**

**Motion:** Approve October 8, 2024, agenda

**Motion/Second:** Member Kutz/Vice Chair Oshiro. Approved unanimously

#### **2. ADOPTION OF AUGUST 7, 2024, MEETING MINUTES**

**Motion:** Approve the August 7, 2024, minutes

**Motion/Second:** Member Dean/Vice Chair Oshiro. Chair Hayes abstained. Approved unanimously

#### **3. PUBLIC COMMENT**

Patty Hayes, Board Chair, opened the meeting for public comment and read from a prepared statement (on file).

Gerald Braude, Jefferson County, highlighted concerns about misinformation and the ethical implications of COVID-19 mandates. G. Braude said the conversation often overlooks the human rights issues faced by those who refused vaccination, especially among marginalized communities. G. Braude contrasted state responses and approaches to mandates. G. Braude reflected on Natalie Chavez comments to Whatcom County Council, about those discriminated against for not taking COVID-19 shots. G. Braude said discrimination was not mentioned in a recent Department of Health (Department) report.

Bill Osmunson, Retired Dentist, MPH, raised questions about the safety and efficacy of fluoridation in drinking water and shared concerns about the long-term implications of fluoride exposure, particularly its classification as a neurotoxin. B. Osmunson talked about regulatory practices, and the money and risks associated with fluoride, especially concerning cognitive development and IQ. B. Osmunson asked for a reassessment of current standards.

Anne L. Bennett, Physician Recruiter & Medical Search Consultant, and Longview WA resident, thanked the Board for supporting water fluoridation in communities, saying Community Water Fluoridation is an achievement in oral health for all ages. A. Bennett said that every major health organization supports fluoridation as an essential tool to

prevent tooth decay. A. Bennet commented the on benefit and the low cost to retain water fluoridation at safe levels. A. Bennet commented on misleading information being circulated by people outside their community, as access to pediatric dental care is being stretched thin. A. Bennett urged the Board to continue to support water fluoridation at safe, effective levels and to push back on misleading information.

Tao Kwan-Gett, Secretary's Designee, commented that the Department is convening scientists to review the National Toxicology Report as well as the Environmental Protection Agency case and will be presenting the findings to the Board. Chair Hayes thanked Member Kwan-Gett for.

**4. CHENEY WATER RECREATION VARIANCE REQUEST, CHAPTERS [246-260](#) & [262 WAC](#)**

Patty Hayes, Board Chair, introduced this agenda item, reminding Board Members that the Cheney and Yakima variance requests were briefly discussed at the Board's August meeting. Chair Hayes also reminded the Board that the requests were for two separate locations, each with three similar requests.

Shay Bauman, Board staff, summarized the variance requests for the Cheney Aquatic Center and the Aquatic Center at Martin Luther King (MLK) Jr. Park in Yakima. Shay recommended that the Board consider each of the six variance requests individually, organized by facility, starting with Cheney, followed by Yakima. Shay noted that the Department of Health (Department) recommends granting some variance requests with conditions outlined in the meeting materials. Shay reminded Board Members about the Board's variance request authority (see presentation on file).

David DeLong, Department staff, stated that only the Board is able to grant variances for features not regulated under Chapter 246-262 Washington Administrative Code (WAC), if there is sufficient evidence that the recreational water contact facility will adequately protect public health, safety, and water quality. David mentioned that all water features in the variance relate to diving envelopes, which are required when entering the water from a diving board, platform, or attraction segment where users enter above the water level. David said the Board's actions during the meeting discussion may set important precedents, redefining how this code is applied in the future (see presentation on file).

David introduced the Ninja Cross water feature as the first variance request for discussion and consideration. David outlined the Water Recreation program's evaluation of the Ninja Cross feature and reiterated that a variance may not be required because this feature is designed to have the user enter at or below water level (see presentation on file).

Chair Hayes requested that Board Members pause for discussion.

Stephen Kutz, Board Member, inquired what would happen if a user didn't use the equipment as designed.

David responded that engineering controls and a long list of operational controls were submitted as part of the variance request. Misuse of equipment is also a concern of the manufacturer, so in their installation and user guide, they specified that there should be a lifeguard that oversees the operation of the equipment. David added that if the Board decides this request is a variance, it could place conditions on use. For example, violations of the engineering controls would mean a user could not use the equipment.

Member Kutz commented that the facility might require users to sign waivers that absolve the facility from liability and place responsibility on the user. Member Kutz expressed concern about how kids are protected and whether the facility or manufacturer has legal liability in cases of injury.

David said that legal liability is outside their area of expertise and that misuse is possible, but the idea behind the recommended condition is to teach people about safe use. David added that nothing is 100% protected; however, this kind of rule is as protective as other rules required for other aquatic features.

Kelly Oshiro, Vice Chair, expressed concern that the updated engineering report came in at the last minute (the day before the meeting) and asked David if they had an adequate opportunity to review the report in-depth for the meeting discussion.

David said that this is complex. Based on the Department's understanding of the petitioner, the argument that the difference in velocity from the two different ways of calculating entry into the water is not critical. Instead, the crucial question the Board should consider is whether this request even needs a variance request. David asked if their response helped answer Vice Chair Oshiro's question.

Vice Chair Oshiro said not particularly and cited page 244 of the Board packet which showed pictures of children on the Ninja Cross device. Vice Chair Oshiro inquired about the equipment point of entry and asked why the hanging bars are not considered a point of entry into the pool. Vice Chair Oshiro also asked whether, based on the photos in the report, the equipment would be monitored only to allow one user at a time, the equipment would only include hanging features (unlike the floating lily pads in the photo), and if the water in the photo is 3.5 feet deep.

David said the pictures in the report are from the manufacturer's sales materials and aren't the configurations proposed in the variance request. Only hanging features are requested; no floating pieces of equipment are needed, and the maximum height of the hanging feature will be based on the user's minimum size and arm length. David said that in a worst-case scenario, a user's toes would be in the water, and their arms would be fully extended. David then added that the Board could recommend that more of a user's body be in the water while using the equipment. Still, the Department thought it was a reasonable standard for ensuring entry into the water would be like someone stepping off the pool deck.

Dr. Tao Kwan-Gett, Secretary's Designee, shared Member Kutz's concerns and said that the safest approach is to judge a device, not necessarily based on how it's designed to be used, but rather how it's likely to be used or could be used. Member

Kwan-Gett emphasized that if the equipment is unsupervised, it could look like a trapeze, and to truly guard the safety of people using this equipment, the Board must consider how it will be used both when it's supervised and unsupervised.

Shay commented that a helpful point of clarity is that lifeguards and facility oversight must mitigate the misuse of these devices. Shay added from the review of the equipment specifications, the intended use based on the shortest user is that their body will be partially in the water, and that misuse of any piece of equipment or pool, in general, is always possible, even with supervision.

Kate Dean, Board Member, inquired if there's a mechanism other than a variance, which would require supervision for these individual amenities at an aquatic center.

David responded that the Department often looks at new or unique water features and equipment and issues approvals with conditions. For example, if a feature has inadequate safety rules, the Department can require additional requirements, such as additional lifeguard staff.

Member Dean said David's response satisfied their concern about this piece of equipment.

Dimyana Abdelmalek, Board Member, asked whether there are any other currently approved structures in Washington that present a similar risk.

David said the most comparable piece of equipment is a series of floating obstacles designed for walking across, but there haven't been any Ninja Cross features approved in Washington yet.

Member Kutz added that the Department has provided information about where these features have been installed in other states. Member Kutz then inquired if the Department had contacted those other states to see if there had been any problems or issues with the equipment.

David responded that they had not.

Chair Hayes then asked for a sense of the Board, and whether the Ninja Cross, based on the definition of a diving envelope in the rule, requires a variance.

Shay mentioned to the Board that one of the manufacturers was present and could add several points of clarification, if needed.

Brooke Hanley, NAC Architecture, shared that they helped to assemble the variance packet. Brooke responded to Member Kutz's question regarding whether other similar features have been approved in the state, with one example being at the Great Wolf Lodge. Brooke said the equipment David referred to was a lily pad walk, which is installed across the state in similar water depths to what the Ninja Cross equipment installation proposes.

Vice Chair Oshiro inquired if a variance request was needed for the lily pads.

David acknowledged it was a good question but mentioned they weren't sure, as they had not been asked to conduct a review for a lily pad.

Michelle Davis, Executive Director, commented that Great Wolf Lodge is on Tribal Land, and the Department does not have jurisdiction there unless there is an agreement with the Tribe.

Member Kutz commented that the report notes under the worst-case scenario, a user begins their drop 20 inches above the water's surface.

David said that isn't the conclusion that the Board should come to, and the reason for that is that when the Department first received this issue, their understanding was that users may be as far as 20 inches above water. However, this understanding changed as they learned more about the intended use from the manufacturer. Users' bodies would be partially in the water when using the device.

Member Dean said they were willing to support the Department's recommendation, given that the Board recognizes the importance of supervision of equipment and feels satisfied with the analysis and engineering report completed.

Member Dean then made a motion that the Board adopt the Department's recommendation determining the installation of a Ninja Cross does not require a variance.

Dimyana Abdelmalek, Board Member, seconded the motion with the condition of supervision, stating that will likely be what mitigates misuse and injuries.

Chair Hayes repeated the motion to Board Members to ensure it was captured accurately. Chair Hayes then inquired if the Board could vote that this request doesn't require a variance and apply a condition.

Lilia Lopez, Assistant Attorney General, said they didn't review all the rules to see existing conditions and requirements regarding lifeguards and supervision of equipment. Lilia added that if these requirements do not exist in the rules, then the Board cannot add something here unless it is because it imposes a variance.

Chair Hayes asked staff for the record if other parts of the rule require lifeguarding and supervision at pools where this type of equipment would be installed.

David responded that yes, these pools are required to have lifeguards and that the Department would also require that the device be used in compliance with the manufacturer's recommendations.

Chair Hayes sought clarification on whether a vote in favor of this request would mean that a variance is not required, and if the Department can still require adherence to the rule and the manufacturer's supervision requirement.

David said yes.

Chair Hayes repeated for the record that the Department would apply the manufacturer's recommendation, which would be the addition of direct supervision of the equipment. Chair Hayes said the Board could then move forward with consideration of the equipment not requiring a variance.

Member Kutz inquired whether pools are subject to annual inspections and licensing by local health jurisdictions, depending on their size and complexity.

Member Kutz also asked if local health departments mandate specific lifeguard supervision requirements.

David said yes, but there is variability from county to county.

Member Abdelmalek asked for clarification on the number of lifeguards required and whether the discussion was about having a single lifeguard on duty or an additional lifeguard to supervise the equipment per the manufacturer's guidelines.

David confirmed that two lifeguards would be needed to meet the requirement.

Vice Chair Oshiro asked for additional clarification on the lifeguard requirements in the rule compared to the manufacturer's guidelines.

Shay clarified that part of the manufacturer's recommendations and the variance request is that the Ninja Cross will have a dedicated lifeguard to supervise swimmers at all times in addition to other lifeguard requirements.

Vice Chair Oshiro recommended following the Board's rule with respect to lifeguard requirements.

Chair Hayes clarified that the Board wants the Department to add the additional lifeguarding requirement through the manufacturer's recommendations.

Member Kutz stated that the question is whether this piece of equipment requires a variance or not, and that is what the Board is voting on here.

Chair Hayes said that is correct, but also with the caveat that Member Abdelmalek added. Chair Hayes then asked Member Dean and Member Abdelmalek to try and restate the motion for the record.

Member Dean said the original motion was that the Board adopt the Department's recommendation in determining that the installation of a Ninja Cross does not require a variance.

Member Abdelmalek added that the Department, through their normal evaluation process, will place a condition on the equipment to include a lifeguard in accordance with the existing WAC as well as the second caveat of a dedicated lifeguard to the equipment per the manufacturer's instructions.

Chair Hayes stated that the Board is linking the manufacturer's instructions which are pointing to an additional lifeguard. Chair Hayes then inquired if Board Members were clear on the motion.

Member Kutz added that the motion sounded good if the Board is clear that the facility must follow the manufacturer's guidelines on supervision.

Member Kwan-Gett pointed out that the manufacturer's recommendations for the Ninja Cross include guidance on signage as well, and inquired if this would be another requirement the facility would need to follow.

Chair Hayes noted that staff were nodding their heads in agreement.

Member Kutz re-emphasized that the facility must follow all manufacturer's recommendations in implementing these devices.

**Motion:** The Board adopts the Department's recommendation that the installation of a Ninja Cross, as specified, complies with the rules and does not require a variance and that installation and implementation of the Ninja Cross obstacle course is subject to all the conditions recommended in the manufacturer and user guidelines and by the Department of Health.

**Motion/Second:** Member Dean/Member Abdelmalek. Member Love absent during vote. Approved by majority

David introduced the Aqua Climb water feature as the next variance request for discussion and consideration. David shared that the Aqua Climb is a 5-Alt and 5-high climbing wall that, when used as expected, people enter the water from the wall feet first and is designed with the expectation that users might strike the bottom with their feet. David presented the Department's recommendation to the Board, that this proposed installation aligns with the intent of providing a diving envelope, as participants are unlikely to contact the pool bottom. David said the Department and Spokane Regional Health District recommend that the Board approve this variance request, with eight specified conditions (see presentation on file).

Chair Hayes thanked David for presenting the request and noted for the Board's awareness that they will need to vote on two separate motions for the Aqua Climb. Chair Hayes emphasized that this request pertains to Cheney, and motions for Cheney cannot be combined with those for Yakima. Chair Hayes then asked David if the variance request for the Aqua Climb was substantially different from this request.

David responded that these requests are different because of the installation, the pool water depth, and the proposed height of the wall.

Member Kutz inquired if the Cheney facility meets the minimum depth for diving requirements currently in the Board's rule, or if it requires a waiver.

David responded that this request requires a waiver because although the minimum depth is close to the required depth in the rule, it's not deep enough.



Member Kutz then asked about what the difference in depths were.

David said they would have to go back and look at the Pool and Hot Tub Alliance (PHTA) standards.

Member Dean commented on the high costs associated with building large permanent structures at aquatic facilities, noting that these add-on amenities are becoming increasingly common. Member Dean inquired about the current water recreation rulemaking and whether the Department is considering addressing this type of equipment through rules rather than individual variances.

David responded that this could be considered in the future for rule development, however, if the Department were to adopt the Model Aquatic Health Code outright, then they would follow the manufacturer's recommendations. David added that for this piece of equipment, the manufacturer has different depths for the different configurations of climbing walls.

Member Kutz suggested that a valuable addition, given the newness of this equipment and its potential for becoming more common, would be to require all injuries to be reported to local public health.

Chair Hayes said that could be a consideration for future discussion.

Member Kwan-Gett asked for additional information on envelope safety depths and whether the Board can trust or assess the accuracy of the manufacturer's estimates of the safety envelopes.

David noted that the Department can request engineering reports, like those for these variance requests. David cautioned that the results for both water penetration and velocity depend on the initial assumptions made in the process. In response to Member Kwan-Gett, David emphasized that the Department and the Board can trust the reports if they are knowledgeable about evaluating this equipment and asking the right questions.

Socia Love, Board Member, mentioned that they weren't prepared to vote on the Ninja Cross equipment during the earlier discussion but would be voting on this item. Member Love also expressed appreciation for the Board and Department making their own assessments of the equipment, in addition to the recommendations provided. Member Love raised concerns about multiple users using the equipment simultaneously and was surprised that the manufacturer's recommendations permit several people to use it at the same time.

**Motion:** The Board moves to grant a variance to WAC 246-262-060(5)(b)(vi), diving envelope requirements, to install a climbing wall as specified by the variance request at the Cheney Aquatic Center, subject to the conditions recommended by the Department of Health and Spokane Regional Health District.

**Motion/Second:** Member Dean/Member Kutz. Approved unanimously.

David noted that a colleague had shared the answer to Member Kutz's earlier question regarding minimum depth and PHTA standards. According to PHTA standards, the deeper part of the wall should be 10.8 feet, so it is nearly a foot deeper than what is shown for the Cheney installation.

David introduced the AquaZip'N Rope Swing as the final variance request for the Cheney facility. David shared that the AquaZip'N Rope Swing is a rope swing plus zip line, and when used as expected, participants enter the water in a body orientation with their heads up. David then presented the Department's recommendation to the Board, that this installation meets the intent of providing a diving envelope because participants are unlikely to contact the pool bottom. David said the Department and Spokane Regional Health District recommend that the Board approve this variance request with seven specified conditions (see presentation on file).

Member Kutz asked if there is a minimum age and height requirement for using this equipment.

David confirmed that there are both minimum and maximum height and weight requirements.

Shay added a point of clarification that users need to pass a swim test to use this equipment.

Member Dean made a motion for the Board to grant the variance.

**Motion:** The Board moves to grant a variance to WAC 246-262-060(5)(b)(vi), diving envelope requirements, to install an AquaZip'N Rope Swing as specified in the variance request at the Cheney Aquatic Center, subject to the conditions recommended by the Department of Health and Spokane Regional Health District.

**Motion/Second:** Member Dean/Member Abdelmalek. Approved unanimously.

The Board took a break at 11:33 a.m. and reconvened at 11:42 a.m.

## **YAKIMA WATER RECREATION VARIANCE REQUEST, CHAPTERS [246-260](#) & [262 WAC](#)**

Patty Hayes, Board Chair, asked Department staff to highlight the differences between these three equipment requests so the Board could focus on any items that hadn't already been discussed during the Cheney equipment requests.

David DeLong, Department staff, introduced the Aqua Climb water feature variance request for MLK Park in Yakima for discussion and consideration. David noted that this climbing wall would use a 3-high configuration, which differs from the Cheney request because it would be a shorter wall placed in less deep water. David then presented the Department's recommendation to the Board, stating that installation provides a similar level of risk to other typical pool uses because participants may contact the pool bottom

at a very low velocity. David added that the Department recommends the Board approve the variance request with seven specified conditions (see presentation on file).

Stephen Kutz, Board Member, inquired if the risk is equivalent for this device, compared to the device for Cheney, even though the wall is shorter, and the water is shallower.

David responded that the manufacturer's calculations show that penetration to the safety envelope would result in a lower velocity, meaning a person is moving slower when they contact the floor from falling from the shorter height.

Member Kutz asked if this was the same manufacturer as the Ninja Cross.

David said this is a different manufacturer. David said it is likely that the calculations for the Aqua Climb here are underestimated, but the user should still be contacting the bottom of the pool at a velocity that is similar to stepping off a deck into 3 ft of water.

Vice Chair Oshiro and David discussed and clarified what a measurement on the slide meant (center of gravity of user).

Vice Chair Oshiro offered a motion.

Member Kutz discussed wanting to ensure that the local public health can put additional requirements on this, such as reporting of injuries.

David said injury reporting for serious injuries is already included in WAC. David appreciated the Board's questions about injury reporting because the Department would like to see a more effective method of reporting than what's currently in place.

**Motion:** The Board moves to grant a variance to WAC 246-262-060(5)(b)(vi), diving envelope requirements, to install a climbing wall as specified by the variance request at the Aquatic Center at MLK Jr. Park, subject to the conditions recommended by the Department of Health.

**Motion/Second:** Member Oshiro/Member Kutz. Approved unanimously.

David provided briefed the Board on the AquaZip'N Rope Swing.

Vice Chair Oshiro offered a motion.

Member Kutz hope to never see the manufacturer change their minimum levels. We need to be cautious about any future changes by the manufacturer.

Member Abdelmalek discussed looking forward to the new aquatic guidelines as well. Opportunity to ensure uniformity and consistency when we look at these sorts of facilities.

**Motion:** The Board moves to grant a variance to WAC 246-262-060(5)(b)(vi), diving envelope requirements, to install an AquaZip'N Rope Swing as specified in the variance

request at the Aquatic Center at MLK Jr. Park, subject to the conditions recommended by the Department of Health.

**Motion/Second:** Member Oshiro/Member Dean. Approved unanimously

Vice Chair Oshiro offered a motion for the Yakima Ninja Cross obstacle.

Lilia Lopez, Assistant Attorney General, discussed wanting to clarify that the Board is not applying those conditions. It would be something coming from the Department.

Vice Chair Oshiro offered a revised motion.

**Motion:** The Board determines that the installation of a Ninja Cross obstacle course, as specified in the variance request, does not require a diving envelope and, therefore, does not require a variance for installation and directs the Department of Health to tell the petitioner that they must follow the manufacturer, installation, maintenance, and user guidelines and all Department of Health's conditions when proceeding with the installation.

**Motion/Second:** Vice Chair Oshiro/Member Kutz. Approved unanimously.

## 5. YAKIMA PUBLIC HEALTH

Andre Fresco, Executive Director, Yakima Health District, welcomed everyone to Yakima. Andre thanked the Board for its commitment to the investment in Foundational Public Health Services (FPHS) and said this funding has made it possible to create new systems for the future. Andre described Yakima as a vibrant region with unique challenges, noting its large geographical area and long history as the first health district in the nation. Andre emphasized the importance of cross-training staff to maximize service delivery, especially during the COVID crisis, and highlighted partnerships with state and federal agencies to ensure equitable, real-time services. Andre also discussed ongoing community issues, including groundwater contamination and forever-chemicals, and the need for local partnerships to address these challenges despite limited funding.

Dimyana Abdelmalek, Board Member, asked if the Board should keep certain things in mind about Yakima and its local health jurisdiction.

Andre spoke about Yakima being an agricultural community. When Andre and their wife moved there, they wanted to share with their children the hard work of what it takes to provide food for the community. Transparency is needed in serving this population. People are often focused on vaccines when they think about public health, but there are broader components like water quality and land use.

Andre spoke about the social determinants of health. We are serving people who have struggled and who face barriers to accessing healthcare. The issues facing rural Washington are different than in the cities.

Kate Dean, Board Member, asked what Andre has learned about serving a population of seasonal labor.

Andre said that in the 1970's they were able to attract people to the area who were invested in agriculture. In partnership with the Department of Health (Department), they have been able to provide Care-A-Vans, serving people without traditional access to care. Andre discussed investment in language access and the importance of working with trusted community messengers on outreach.

Steve Kutz, Board Member, shared appreciation for Andre and said they have seen a lot of changes in bigger cities but the changes in Yakima have been unique. Member Kutz's mom graduated from Davis High School in 1942 and rode to school on a gravel road on her bicycle. One of the largest Tribes in the state is in this area. Member Kutz appreciates Andre's humility and work for the Tribe.

Andre said it's a privilege to extend services to all people in our state. Andre said that their job is to support the team and the department. They've been able to hire nontraditional candidates. They've retained quality people on behalf of this great mission.

Member Kutz mentioned the history of the longest running Washington Administrative Code change in Yakima County.

Dr. Tao Kwan-Gett, Secretary's Designee, thanked Andre for leadership in the state and the work with the local jurisdiction.

Andre loves that Washington has a decentralized public health system and a system of support for others who may never thank you or know what your work is. Being in Yakima County allows for the ability to provide care for people who may be in crisis.

Patty Hayes, Board Chair, highlighted the mutual support given and received with Andre over the years. Chair Hayes is on the FPHS steering committee's Equity Technical Workgroup with Andre and complimented his commitment and love for community.

The Board took a lunch break at 12:30 p.m. and reconvened at 1:10 p.m.

## **6. RULES BRIEFING – GROUP A PUBLIC WATER SUPPLIES, [WAC 246-290-315\(8\)](#) PFAS EMERGENCY RULEMAKING**

Kate Dean, Board Member, reviewed the Board's adoption of emergency rules during its June 12, 2024, Board meeting. Those changes are effective for 120 days, which ends October 22, 2024. If the Board wants to retain those changes, we need to adopt those changes at this meeting for another 120 days.

Shay Bauman, Board staff, provided an update of the three-part rulemaking process with a presentation and corrected a typo to reflect the correct WAC number. Shay stated that the emergency amendments will end on October 22, 2024. There has been a positive impact, and these changes are important to protect people served by Group A public water systems. Over 40 people requested to join an interested parties list since

we informed the public about the filing of the permanent rulemaking. Shay described working with the Department's Environmental Justice (EJ) team to conduct an EJ assessment. Shay explained that the abbreviated rulemaking is exploring ways to adopt the federal standards and effective dates into the rule (see presentation on file).

Shay asked for feedback from Board Members on areas of interest for the November Board meeting. Shay will facilitate a panel discussion featuring experts from across the Department of Health (Department) and the Department of Ecology.

Dimyana Abdelmalek, Board Member, thanked Shay for working on this topic. Member Abdelmalek is still learning about the impact of per- and polyfluoroalkyl (PFAS) exposure. Member Abdelmalek wonders as a local public health representative about the dashboard. It's important to understand at an agency level as well as in local communities.

Shay has the goal of having an education session where local representatives, including Tribal Members, present perspectives.

Kelly Oshiro, Board Vice Chair, would like to learn from the Department of Ecology as well as other partners and parts of the agency.

Stephen Kutz, Board Member, asked about the timeline.

Shay noted that the CR-101 for permanent rulemaking was recently filed. Shay described the narrow scope that may allow earlier completion than a typical 18-month to 2-year timeline. Shay noted the section by section review is taking some time.

Member Kutz asked about the connection to the federal levels and what would happen if we created higher standards.

Shay explained that the state action levels (SALs) are what are being considered. Whichever is stricter will apply.

Member Kutz expressed the importance of this rulemaking. Member Kutz said it should take precedence and be done right.

Patty Hayes, Board Chair, asked about any work being done in conjunction with research universities and healthcare systems. How is the system working together? Are providers discussing messages with families? Chair Hayes asked about childcare centers.

Member Dean acknowledged limitations on what we can say during legislative session but asked about what is being done to stem these harmful chemicals from entering our food streams.

Member Kutz thanked Member Dean for bringing the concern of Tribal Members.

Member Abdelmalek asked how we can carry back knowledge to our communities and plug into state efforts.

Shay invited more feedback by e-mail and presented more information about the emergency rulemaking and the amendments. Shay highlighted the changes adopted by the Board.

Member Kutz asked for clarification about the abbreviations of maximum contaminant level (MCL) and state action level (SAL).

**Motion:** The Board directs staff to file a CR-103E to initiate rulemaking for WAC 246-290-315, to continue to clearly maintain the SALs and associated requirements until the federal standards are effective.

**Motion/Second:** Member Kutz / Vice Chair Oshiro. Approved unanimously

Vice Chair Oshiro asked about the community members who attended the listening session.

Shay said the meeting was in Camas and that Michelle Larson, Board staff, and Shay attended alongside the Department.

## 7. INTRODUCTION – SENSE OF THE BOARD

Michelle Davis, Board Executive Director, shared the Board's policy 2001-01 about monitoring and communicating with the Legislature about legislation that pertains to the Board, and said the Board adopts a legislative statement each Biennium, which outlines those priorities that the Board would like staff to monitor and provide feedback to the legislature on.

Executive Director Davis provided the most recent statement by the Board on possible legislative issues and shared that the document needs to be updated for the 2025 legislative session. Executive Director Davis noted the document has grown significantly in recent years and presents a challenge for a small team to be able to provide thoughtful feedback, due to the breadth of the statement.

Executive Director Davis will work with the team to reduce the document so it's more meaningful and asked what the Board priority's issues are and what should remain. Executive Director Davis said the Board's top priority is funding foundational public health services that support the entire system and highlighted the Health Disparities Council request legislation. Executive Director Davis said the Board has partners who will make recommendations, and some of those recommendations may impact Board authority, for example, possible water request legislation by the Department. The Board may also hear from other partners within the public health system about critical work that they're doing in the public health system. Executive Director Davis hopes to provide an outline of those ideas in November, and then ask for Board adoption of a new statement in January. Staff capacity remains a challenge and the process for following and analyzing bills may need review.

Kelly Oshiro, Board Vice Chair, noted that the legislative policy was last revised in 2012, and another option is to revisit the policy. Vice Chair Oshiro mentioned it may be helpful

for the Board to consider prioritizing issues or bills coming in that may adversely impact the public health system. Vice Chair Oshiro stated that providing the Board rulemaking authority Washington Administrative Code for each priority area would be beneficial.

Stephen Kutz, Board Member, stated the Board cannot impact a lot of the previous priorities in Board actions. The Board needs to look at any of the priorities and ask if the Board has the authority to make new rulemaking or determine if it is ongoing rulemaking. If it's not, then maybe it isn't as high a priority, because the Department and local public health are doing the broader public health. Member Kutz shared that looking through a lens of what informs or impacts the work the Board does.

Dimyana Abdelmalek, Board Member, shared their support in the focus being where the Board has authority, or if it's within its role to move the needle. Member Abdelmalek shared the benefits of other partners coming and sharing their priorities, so the Board can maintain visibility and have their perspective informed on the entire public health system while maintaining a core focus on the pieces of work that are within the Board's scope.

Patty Hayes, Board Chair, commented that looking at what triggers a bill analysis may be a good approach and that they see things from the last year could be removed. The Board has a unique voice in some spaces, and if that voice is only used for things that affect rulemaking, or it appears that way, it may diminish the potential of the Board's forum. Chair Hayes said there are ways to prioritize things that could be done in a way that doesn't trigger a big bill analysis but would have a way to get a sense of the Board. In some cases, the Board's unique role as a public forum is different from other portions of the public health system, let alone government. Chair Hayes wants to improve the statement and avoid an overload of staff. Chair Hayes wants to ensure the Board doesn't lose growth, recognition of who this Board is, and the view the Board brings.

Member Kutz stated sometimes members of the public think the Board can address a whole number of things that the Board hears about in public meetings and comments. But it's nothing that the Board really can address. That doesn't mean that the Board doesn't listen to it and take it into account. Member Kutz asked if the Board has weighed in on an initial issue that we didn't impact rulemaking, but had concerns about. Member Kutz shared that it's an important component of being able to do it when it's helpful. Member Kutz stated hearing about legislative priorities and issues that everybody's bringing up and as members when we hear about it, feedback can be provided to Board staff.

Vice Chair Oshiro added Board staff might be able to review the policies again on actions, and bills of interest, and potentially make movement there and the policy, to refine that process.

Executive Director Davis shared that they will review the policy, process and statements with Board staff Executive Director Davis addressed Member Kutz's question and shared times when the Board doesn't necessarily have authority to address critical public health issues, but it has been a priority, such as access to tobacco and vapor products. The Board has monitored tobacco in the past and provided feedback on different legislative proposals because the Board has recognized the impact. Being able



to express concern to the legislative committee is a good place for the Board to raise its voice.

Kate Dean, Board Member, shared about the local board of health training last week. New members want to take on everything, such as housing and tackling racism. They understand the desire and it felt a little crushing to think how the accounting department can take on that scope of work. Member Dean sees the value in being able to be a resource for legislators, weigh in on things, and caution about mission creep and pressure on staff. It was suggested to socialize the concept of the social determinants of health. It's important to think about the lens that the Board brings to things. Member Dean shared the lens of social determinants is where public health can kind of help move the needle. Things like housing and behavioral health are hard to tackle programmatically. That may be one place where the Board could capture some of the things that feel a little bit outside of the Board's purview, by talking in terms of the social determinants instead.

Chair Hayes requested all Board Members to continue to think and communicate with Executive Director Davis.

#### **8. UPDATE – SCHOOL RULE REVIEW PROJECT**

Patty Hayes, Board Chair, shared that this large project impacts every child and youth in the State and that the school environment is part of a social determinant of health. Chair Hayes stated that four technical advisory committee (TAC) meetings have been held. Last Friday, there was an issue where it was clear a subcommittee was needed. Local public health and the schools will work on bringing back a solution. This will add more workload. It is also clear that the School Rules Project will need more meetings. The timeline can't change but more steps are being added. There is a listening session at the Union Gap School in the Yakima region and there will be a table at the Washington State Public Health (WSPHA) Annual Conference.

Andrew Kamali, Board staff, provided a quick reminder on the proviso. The Legislature was looking for a way forward on developing new school environmental health and safety rules focusing on the minimum standards. The proviso directed the Board to develop a new proposed rule, conduct an environmental justice assessment, do a fiscal analysis, and make implementation recommendations for the rule. The team is currently developing the proposed rule, as well as completing an environmental justice assessment. The fiscal analysis process is about to start. So far, TAC meetings have covered the intro, the purpose, and the applicability sections of the new proposed rule. In the third TAC meeting, they covered some general definitions, severability, variances, appeals, and complaints. The complaint section has been removed due to TAC member feedback and recommendations. In the most recent meeting last Friday, site, assessment, plan, review, and inspections were addressed, which also led to the subcommittee and where discussion of the plan review process for schools will be addressed with information about bathrooms and showers. TAC members meet every two weeks for about six hours, not including preparation time. There will also be a series of listening sessions. The flyer for the first one is included in the meeting materials. The Healthy Environment for All team has provided capacity to offer community compensation as well as food for community members who attend. There are plans to

have listening sessions throughout the state, including fully remote or online options. There will also be focus groups as the TAC team has gone through the rule and has language for those who may have more pointed information that they'd like to share about specific parts of the rule. Andrew reiterated that the goal is minimum safety standards, health and safety standards that are implementable, and that allow enough flexibility for schools and local health jurisdictions to come together and work together and support each other.

Stephen Kutz, Board Member, shared their interest in hearing what the public identifies as issues. As public meetings are held there may start to become a sense of at least focus areas that the Board is being asked to address in the rules. Member Kutz shared they are interested in what a parent with kids or a grandparent has to say.

Chair Hayes stated there is a representative from the Parent Teacher Student Association on the TAC and that member is great about bringing up questions and things from their perspective. One of the challenges that the staff has brilliantly tried to maneuver is a lot of the things that parents might bring up of concern, such as bullying, opioid problems, and children's mental health. One of the things that is going to be an ongoing challenge is making sure, when engaging with the broader public, that they understand really what this is, and do not have any expectations that we're a venue to address these other things.

Chair Hayes informed the Board about their connection with the University of Washington School of Nursing Bothell program. They have a Bachelor of Science in nursing leadership policy course who are pivoting seven students to assist in this project to do additional research that the team identified. They may have some targeted discussions with school nurses. The staff wouldn't have the capacity to do so.

Andrew shared we want to make sure that we capture that community input and hear from parents, students, and teachers.

Dimyana Abdelmalek, Board Member, shared they are excited that we're in a place where we can tackle this work. Member Abdelmalek stated this was one of the things that they learned about early in joining the Board and as a health officer for a local health jurisdiction that does do school inspections, they know how important the support of this framework is.

## **9. UPDATE – NEWBORN SCREENING PROJECT**

Kelly Oshiro, Board Vice Chair, introduced the item. Vice Chair Oshiro discussed the Board's authority to adopt rules for newborn screening and the process for considering conditions for inclusion. Vice Chair Oshiro provided background regarding the Board's previous work on this topic and previewed the upcoming work by the Newborn Screening Project.

Kelly Kramer, Board staff, delivered an update about the Newborn Screening Project's goals and timeline (see presentation on file).

Stephen Kutz, Board Member, asked where the request to consider the condition branched chain ketoacid dehydrogenase kinase (BCKDK) came from. Kelly said it came through the Legislature.

Patty Hayes, Board Chair, requested that future updates include context around funding. Chair Hayes said that there are funding issues around Medicaid, the Department of Health (Department), and legislation that affect the Board's work in this area. Kelly said that the first technical advisory committee (TAC) will address this topic.

Kate Dean, Board Member, asked whether the Board should expect specific recommendations to come out of the first TAC meeting. Kelly said they don't expect to report recommendations to the Board at their next meeting in November.

#### **10. RULES UPDATE – SANITARY CONTROL OF SHELLFISH, CHAPTER 246-282 WAC**

Patty Hayes, Board Chair, introduced the item and shared background on the Board staff's progress on this rule.

Shay Bauman, Board staff, shared updates to this rulemaking, including staff efforts to collaborate with industry (see presentation on file).

Stephen Kutz, Board Member, noted that not all Tribes in Washington State may be members of the Northwest Indian Fisheries Commission and requested staff check membership.

Kate Dean, Board Member, asked whether a government-to-government consultation with Tribes is needed for rulemaking. Shay said that Tribal outreach was a focus at the early stages of the rulemaking project. Chair Hayes and Member Kutz discussed how this rule interacts with Tribal shellfish regulations. Shay confirmed that Tribes are regulated by this rule.

The Board took a break at 2:30 p.m. and reconvened at 2:40 p.m.

#### **11. BOARD ANNOUNCEMENTS AND OTHER BUSINESS**

Michelle Davis, Board Executive Director, reviewed the items included in the meeting packet. This included the Health Promotion (HP) Committee meeting minutes, the final memorandum of Understanding with the Department of Health, and two petition responses related to Wilson's Disease and Holding Tanks for Sewage Systems.

Executive Director Davis discussed the new Policy Advisor position and that it will be open for applications until October 17. Executive Director Davis asked Board Members to share the open position among their networks.

Executive Director Davis provided updates on the Health Impact Review team and their recent work of completing a review of Senate Bill 5435 at the request of Senator Trudeau. Executive Director Davis provided additional updates on Board staff work including the HP Committee and Health Disparities Council (HDC) meetings. Executive Director Davis discussed their presentation with Chair Hayes at the Local Boards of

Health meeting the previous week, and Shay and Andrew's presentation at the Environmental Health Directors meeting. Several staff attended the Centennial Accord meeting and the Affiliate Tribes of Northwest Indians meeting in the previous weeks.

Executive Director Davis mentioned that staff will attend the Washington State Public Health Association Conference in Yakima. Chair Hayes is participating in a panel related to Foundational Public Health Services and the HDC Council Manager will present on the HDC. The School Rule Project team will also hold a community listening session at Union Gap School.

Executive Director Davis concluded by discussing upcoming items. The Board has received a petition related to fluoride and will consider the petition at the November Board meeting. Executive Director Davis will share plans to move ahead with hiring a Deputy to help manage some of the Board's operations and capacity needs.

## **12. DEPARTMENT OF HEALTH UPDATE AND BE WELL WA**

Dr. Tao Kwan-Gett, Secretary's Designee, shared an update from the Department of Health (Department) on the Be Well Washington initiative. Member Kwan-Gett also provided an update on communicable diseases and respiratory illness data (see presentation on file).

Stephen Kutz, Board Member, asked about the efficacy of antiviral medications.

Member Kwan-Gett said we don't yet know how effective that will be. Antiviral medications are expected to be of benefit, but we may not know specifics until we have more experience.

Member Kutz asked about the high-risk side effects of Paxlovid.

Member Kwan-Gett said there are metallic tastes, and that malaise can occur, but the benefits far outweigh the risks.

Dimyana Abdelmalek, Board Member, shared that cost is a factor for some in the community getting Paxlovid. There can also be interactions with other medications. Member Abdelmalek commented that Telehealth was beneficial for access to Paxlovid. Despite clear public health data, it can be difficult for providers to give access. Member Kwan-Gett acknowledged that there are equity concerns for obtaining antiviral medications.

Member Abdelmalek asked about Personal Protective Equipment (PPE)

Member Kwan-Gett said PPE can be requested through the Department of Health's Office of Resilience and Health Security. Member Kwan-Gett can follow up with a contact if needed.

## **13. BOARD MEMBER COMMENTS**

Paty Hayes, Board Chair, requested the Board for comments.

Kate Dean, Board Member, commented that Michelle Davis, Board Executive Director, and Patty Hayes, Board Chair, did a good job at the meeting last week, and acknowledged the major breadth of work for health impact reviews (HIR) and how quickly work was distributed. Member Dean also noted two presentations from that meeting from public health law centers and said these presentations brought in other perspectives. Member Dean expressed appreciation for Vicki Lowe, who works for Tribal public health in the State and appreciated the Boards involvement.

Chair Hayes thanked Board staff for keeping the meeting on track and their preparation.

Stephen Kutz, Board Member, thanked Board staff for getting everyone up to speed. Member Kutz commented that it may be beneficial to teach the team how an HIR is conducted.

Michelle Davis, Board Executive Director, reported that the HIR process is complicated, and the Board has talented analysts to conduct quick HIRs.

## **ADJOURNMENT**

Patty Hayes, Board Chair, adjourned the meeting at 3:10 p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Patty Hayes, Chair

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