



COLORADO BOARD OF HEALTH
Minutes for Wednesday, December 18, 2013
Approved January 15, 2014

Colorado Department of Public Health and Environment
Sabin-Cleere Conference Room, Bldg. A, 1st Floor
4300 Cherry Creek Dr. South, Denver, CO 80246

Colorado Department
of Public Health
and Environment

NOTE: These minutes are a summary of the proceedings and motions of the meeting of the Colorado Board of Health. The complete and accurate record is the audio recording of the meeting. Documents referenced in the minutes are available for public inspection at the Board of Health Office, Colorado Department of Public Health and Environment, Bldg. A, 5th Floor, 4300 Cherry Creek Drive South, Denver, CO, or call 303-692-3464 to request copies. Copies of the rulemaking documents, reports, briefings and presentations may be obtained by submitting a request to: cdphe.bohrequests@state.co.us

Y/N	Board Member Attendance
Y	Christopher Stanley, M.D., District 1
Y	Laura Davis, District 2, President
N	Jill Hunsaker-Ryan, County Commissioner, District 3
Y	Gary Teague, District 4
Y	Betty McLain, District 5
Y	Joan Sowinski, District 6
Y	Rick Brown, District 7
Y	Christine Nevin-Woods, D.O., At-Large, Vice President
Y	Sue Warren, At-Large
Y	Larry Wolk, Executive Director, (ex-officio)

Y/N	Staff Attendance
Y	Joni Reynolds, Health Programs Director
Y	Deborah Nelson, Board Administrator
Y	Jamie L. Thornton, Program Assistant
Y	Jennifer L. Weaver, First Assistant Attorney General

Call to order/Role call

The meeting was called to order at approximately 10:05 a.m. by Ms. Davis, Board President.

Approval of the minutes

BY UNANIMOUS CONSENT, the Board approved the November 20, 2013 meeting minutes as amended. The amendments were to correct a couple of typos and formatting.

Ms. Davis announced that the Board just received a petition to conduct an emergency rule-making hearing regarding the Medical Marijuana Registry. She advised the audience that public comments pertaining to the petition would not be received during today's meeting since the Board has not had adequate time to read it. She asked the Board to review the petition and submit their comments to Ms. Nelson.

Public comments regarding matters not on the agenda

Ms. Davis opened the public comment period by reminding the audience to focus their comments on matters that are not on the agenda and that do not pertain to the petition received by the Board this morning. She remarked that public testimony would be limited to two minutes per person.

Kathleen Chippi, Patient and Caregiver Rights Litigation Project, remarked that the Department violated the LaGoy v. Ritter ruling by not providing a rule-making notice, directly, to all state-

registered medical marijuana patients. Ms. Nelson advised the Board that pursuant to statute rulemakings for the Medical Marijuana Registry are to be noticed in the newspaper in addition to the noticing that occurs through the Secretary of State's Office, Section 25-1.5-106(4) C.R.S. The Department met the medical marijuana registry notice requirements. Ms. Weaver stated that the statute addressed the LaGoy order.

Michael Elliott, Executive Director, Medical Marijuana Industry Group (MMIG), remarked that the MMIG supports using funds from the Medical Marijuana Registry for research to learn more about how medical marijuana helps patients.

Board comments regarding matters not on the agenda

Dr. Nevin-Woods introduced Dr. Carolyn Smallwood, a Pueblo family physician in residency, who is interested in public health.

Rule-making Hearing: 6 CCR 1014-4, Colorado Health Care Professional Credentials Application

George Dikeou, Chairman, Health Care Credentials Application Review Committee, and Al Schwindt, Compliance Officer with COPIC Insurance Company, presented the proposed amendments to the Colorado Health Care Professional Credentials Application. Mr. Dikeou discussed the history and creation of the Colorado Health Care Professionals Credentials Application and the Colorado Health Care Professional Credentials Application Review Committee (the Committee). Mr. Dikeou indicated that the Committee spent a great deal of time discussing the need to update or modify the TB section of the application, and that based upon the Board's feedback in October, the tuberculosis (TB) questions remain in the application. Ms. Sowinski mentioned that she was happy to see the language back in the regulations and pointed out that the word "test" was missing in the TB questions on page 26. Dr. Stanley remarked that including the TB language safeguards the public, safeguards the employees who work with health care professionals, and decreases potential gaps for providers who may not be required to be tested for TB when working in other areas of the health field.

Public Comments

Mary Goggin, Tuberculosis and Refugee Health Section Manager, Disease Control and Environmental Epidemiology Division, remarked that she was asked to review the proposed changes as a subject matter expert. Ms. Goggin remarked that her recommendations reflect current TB testing practices and safeguards associated with new risk factors. Ms. Goggin responded to Board questions regarding the prevalence of active TB in physicians, healthcare workers personal diagnosis, and universal protections as it relates to TB testing.

MOVED by Dr. Stanley, seconded by Ms. Sowinski, to adopt the proposed amendments to 6 CCR 1014-4, Colorado Health Care Professional Credentials Application, with the addition of the word

“test” in the first TB question on page 26, along with the statement of basis and purpose, specific statutory authority and regulatory analysis. **MOTION CARRIED UNANIMOUSLY**

Budget Briefing

Roz Bedell, Chief Operating Officer, provided an overview of Department operations, current funding streams, Division budgets, recent legislation impacting the Department’s budget, and the SFY 2014-15 budget cycle. Ms. Bedell responded to Board questions regarding water infrastructure and marijuana research.

Tobacco Settlement Monitoring Report and Proposed Board of Health Recommendation

Andrew Dudley, Budget Analyst, Administration and Financial Services Division, presented a draft of the annual Tobacco Master Settlement Oversight Report. Mr. Dudley discussed the creation of the Tobacco Master Settlement programs and the associated statutory requirements. He indicated the Board and the Department are responsible for the monitoring the operation and effectiveness of tobacco settlement programs. This report is required pursuant to Section 25-1-108.5 C.R.S., and provides information to the General Assembly regarding the distribution and management of the funds. He remarked that Colorado receives approximately \$90 million a year to implement tobacco cessation and prevention programs. He discussed key legislation passed in 2013 affecting the Department’s programs-- House Bill 13-1117 concerning Child Development Programs, House Bill 13-1180 concerning the Nurse Home Visitor Program, House Bill 13-1181 concerning Tobacco Programs, and House Bill 13-1305 concerning the Tobacco Litigation Settlement Cash Fund.

Mr. Dudley indicated that each year the Board reviews the report and makes a recommendation related to the continuation of funding for core tobacco settlement programs. Mr. Dudley responded to several Board questions regarding the report, including: the definition of “core” tobacco settlement programs, funding streams and funding allocations, programmatic outcomes, the potential impact of the Affordable Care Act, the role of the Board, and the need for common metrics. Dr. Wolk sought additional information concerning the forty-nine percent of available Tier 2 funds provided to the University of Colorado at Denver Health Sciences Center for construction bonds. The Board discussed the need for more information to effectively monitor the tobacco settlement programs and make a recommendation to the General Assembly. The Department indicated it would work to provide the Board additional outcomes data to compliment the report and would look at what improvements can be made to future report.

MOVED by Mr. Teague, seconded by Ms. Warren, to continue the funding and recommend the 2013 Tobacco Settlement Monitoring Report to the General Assembly after the addition of the final totals for the Colorado HIV and AIDS Prevention Grant Program on page 33. **MOTION CARRIED UNANIMOUSLY.**

Department Response to Flooding in Colorado

Lyle Moore, Director, Office of Emergency Preparedness and Response, Steve Gunderson, Director, Water Quality Control Division, and William Allison, Director, Air Pollution Control Division, provided a briefing on the Department's response to the Colorado floods. The Directors discussed the economic, health and environmental impacts to Colorado and specific actions taken by their respective Divisions.

Executive Director Report, Larry Wolk, Executive Director

Dr. Wolk discussed a variety of topics including the status of the Department's national accreditation application, the draft rules before the Air Quality Control Commission, and the recent activities of the Office of Emergency Preparedness and Response. He also discussed the Department's progress with sharing evidence-based information, the Department's efforts to align with health care reform as it relates to local public health, the status of the "Simply Health" initiative, and the emergency medical and trauma services repository.

Attorney General's Report, Jennifer Weaver, First Assistant Attorney General, Health Care Unit, Legal Counsel

Ms. Weaver had no updates.

Board Members Reports of Committee Activities

Board members had no reports.

Administrative Updates, Deborah Nelson, Board of Health Administrator

Ms. Nelson announced that the Board of Health is represented on the Governor's Expert Emergency Epidemic Response Committee (GEEERC). Ms. Davis currently represents the Board on the GEEERC. The GEEERC is need of a back-up member to participate in the event Ms. Davis is unavailable. Ms. Nelson discussed the commitment level for committee members and she asked Board members to contact her if they are interested in serving.

Update on Department Activities following the State Auditor's Medical Marijuana Regulatory System, Part II

Ron Hyman, State Registrar and Director, Office of Vital Statistics and Medical Marijuana Registry (MMR) and Dana Erpelding, Interim Director, Center for Health and Environmental Information and Statistics, provided an update regarding the implementation of the State Auditor's recommendations as outlined in the Performance Audit. Mr. Hyman indicated that the Department will be providing a report to the Legislative Audit Committee on January 14, 2014. Mr. Hyman remarked that action has been taken on all of the audit recommendations. The MMR has assessed its need for an improved information technology system to support MMR activities and create efficiencies for patients applying to the MMR. Mr. Hyman

discussed the MMR's efforts to develop processes with the Medical Board and the MMR's efforts to enhance its stakeholder processes. Efforts ranged from surveying stakeholders to improvements to the MMR website. Ms. Erpelding discussed implementing audit recommendations regarding internal policies and procedures, and the recommendations that the Department seek legal advice from the Attorney General's Office. Ms. Weaver indicated that the Attorney General's Office is working its way through the legal opinions requested by the Department. Staff also discussed its effort to develop a recommendation to fund medical marijuana research to support evidence-based practices. Mr. Hyman and Ms. Erpelding responded to Board questions regarding physician oversight and future presentations regarding the audit findings. It is the program's intention to provide its next update to the Board in August with the Medical Marijuana Program Annual Update.

Rule-making Hearing: 5 CCR 1006-2, Medical Use of Marijuana – Fees

Ron Hyman, State Registrar and Director, Office of Vital Statistics and Medical Marijuana Registry and Dana Erpelding, Interim Director, Center for Health and Environmental Information and Statistics, presented the proposed amendments to the annual application fee. The revised fee is in part due to the cost of responding to audit findings and passing on cost savings to MMR patients, and staff reminded the Board that the fee reduction was a recommendation from the Office of the State Auditor. The program recommended a forty-three percent reduction to the fee from \$35 to \$15, effective February 1, 2014. Staff evaluated a number of different approaches to the fee, the variables impacting the current cash fund reserve balance, and the feedback from the stakeholder survey when developing its recommendation. Ms. Erpelding and Mr. Hyman answered Board questions pertaining to budget projections, fee assessment, the rate of drawdown, compliance with the statutory reserve requirement, interest income, and actual program costs. Staff will be reviewing the fee, the impact of retail marijuana, the impact of any proposed legislation or budget request in the upcoming months to ensure \$15 continues to be appropriate. The Board commented on the importance of patients receiving service from the MMR and that the efforts outlined by staff are reasonable and appropriately focused on the customers being served. The Board appreciated the effort to invest in the program.

Public Comments

Kathleen Chippi, Patient and Caregiver Rights Litigation Project, testified in opposition of the proposed fee decrease. Ms. Chippi commented that the auditor and the constitution states that no money can be collected unless it is spent on the issuing of a license and does not allow for research. She stated that the fee should be \$0.00 until the \$13 Million that was excessively collected is exhausted. She mentioned that the constitution does not allow for a 16% reserve and that statute does not override the constitution. Ms. Chippi again remarked that patients were not notified of the hearing. Ms. Chippi was reminded by the Chair that the Board is currently taking testimony on the fee. Ms. Chippi did not redirect her testimony. Though Ms. Chippi received the full three minutes for testimony that was provided to all witnesses, she was removed from the hearing for failure to comply with the Board's instructions.

Robert Corry, Attorney, testified in opposition of the proposed fee decrease. He remarked that the change in the registration fee is invalid because the Board and the Department did not notify all patients about the hearing. Mr. Corry was asked to focus his testimony on the fee. He stated that patients have over paid for the actual cost of running the program and that the only remedy is to reduce the fee to zero or return the money to the registrants. He testified that patients do not support research efforts.

Christi Kelly, Owner, Good Meds, testified that the fee should be less than \$15. She stated that reducing the fee to \$15 is a good start. She asked the Board to consider waiving the fees for current patients until the 16% reserve is reached. She remarked that she supports improvements to the information technology system discussed during the audit update. Board members asked Ms. Kelly to explain different aspects of a dispensary business from market rate, quantities, and types of goods.

Michael Elliott, Executive Director, Medical Marijuana Industry Group, testified that the renewal fees should be zero; however, he supports the state conducting research into the benefits of medicinal marijuana. Mr. Elliott also responded to Board questions related to dispensary business operations and community needs.

Jackie Edwards, patient, discussed the challenges some patients face when applying for the indigent waiver. Ms. Edwards recommended that indigent patients not be required to pay the annual registration fee. Board members asked Ms. Edwards to elaborate on the process for indigent patients. The Board encouraged MMR staff to review the waiver process and make it as easy for patients as possible.

Cara Miller, Contract Lobbyist, Medical Marijuana Industry Group, testified and encouraged the Board to offer existing patients a onetime free renewal of their registration card.

Board Discussion

Staff was provided an opportunity to respond to the testimony. Staff reviewed the results of the stakeholder feedback survey, explained that \$15 creates some stability for the fund while spending down the reserve within five years, and discussed how the excess fund balance came into being with the surge of MMR applications in 2010. Board members discussed the need to take a balanced approach to spend down the cash fund to the statutory reserve limit, appreciating the unknowns for the program and the cash fund. Mr. Teague raised the merit of a \$27 fee to cover actual costs and other approaches to addressing the fund balance. There was further discussion regarding the rationale for arriving at the proposed fee, that \$15 is a good compromise and that the Board has an obligation to reduce the fund.

MOVED by Mr. Brown, seconded by Dr. Stanley, to adopt the proposed amendments to 5 CCR 1006-2, Medical Use of Marijuana - Fees, to reduce the fee to \$15 but not include the language to increase the fee in 2019 (Hearing Packet rule language version 2), along with the statement of basis and purpose, specific statutory authority and regulatory analysis. **MOTION CARRIED (8 – 1)**

This meeting was adjourned at approximately 2:25 p.m.