



## Final Minutes of the State Board of Health

November 18, 2019

The Davenport Grand  
Cedar Ballroom

333 West Spokane Falls Boulevard  
Spokane, WA 99201

### State Board of Health members present:

Keith Grellner, RS, Chair  
The Honorable Jim Jeffords  
John Wiesman, DrPH, MPH  
Bob Lutz, MD, MPH  
Thomas Pendergrass, MD, MSPH Vice-Chair

Stephen Kutz, BSN, MP  
The Honorable Kurt Hilt  
Fran Bessermin  
Jill Wood

### State Board of Health members absent:

### State Board of Health staff present:

Michelle Davis, Executive Director  
Melanie Hisaw, Executive Assistant  
Kelie Kahler, Communication Manager  
Chris Trent, Health Policy Advisor

Stuart Glasoe, Health Policy Advisor  
Alexandra Montañó, Health Policy Advisor  
Lilia Lopez, Assistant Attorney General

### Guests and other participants:

Mary Selecky, Providence Health Community  
Ministry Board & Empire Health Foundation Board  
Amelia Clark, Spokane Regional Health District  
Breean Beggs, SRHD Board of Health  
Kathy Lofy, Department of Health  
Sara Cooley Broschart, Liquor and Cannabis Board  
Lauren Jenks, Department of Health  
Mike Means, Department of Health  
Barb Morrissey, Department of Health  
Todd Phillips, Department of Health  
Brad Bellinger, Lilac City Vapor  
Crystal Oliver, Washington Sun growers Industry  
Association (WSIA)  
Theresa Adkinson, Grant County Health District  
Shawn Frederick, Snohomish Health District  
Derek Pell, Department of Health

Clay Schuman, Yield Farms  
Phil Bowman  
Nate Ashive  
Eric Barker  
Lance Drapeau  
Mike Hoover, PAX Labs  
Travis Jent, Vapor Lounge  
Jaclyn Gallion, Informed Choice WA  
Jim Sledge, Citizen  
Eric Dickson, New ESD 101  
Shaun D'Sylva, Fat Boy Vapors  
Joseph Lennen, Aug Joes Juice  
Jennifer Crews, Informed Choice WA  
Steve Jackson, KPBY  
Evita Krislock, Earth Ministry

Keith Grellner, Chair, called the public meeting to order at 8:32 a.m. and read from a prepared statement (on file).

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

**Motion:** Approve November 18, 2019 agenda

**Motion/Second:** Jeffords/Bessermin. Approved unanimously

### **2. ADOPTION OF OCTOBER 9, 2019 MEETING MINUTES**

Thomas Pendergrass, Vice Chair noted that Dr. Jim Sledge was not present at the meeting, and his name needed to be struck from the minutes. Michelle Davis, Board Executive Director identified minor edits under item 08, specifically the testimony by Sara Cooley Broschart from the Liquor and Cannabis Board the phrase “are being planned” is redundant. Additionally she identified another edit in Cait and Lindsay’s testimony – a sentence starts with the word “the” instead of “she”. Member Wiesman noted a few minor typos.

**Motion:** Approve the October 9, 2019 minutes, as amended and allow staff to correct non-substantive and grammatical errors that do not change the content.

**Motion/Second:** Hilt/Pendergrass. Approved unanimously

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

Michelle Davis, Board Executive Director welcomed the Board to Spokane, and directed members to the materials in tab 3. She announced that Chris Trent (biography on file) had joined the Board’s staff on October 16. Her position is funded through foundational public health services and she will be working on issues that fall within environmental health and communicable disease.

Ms. Davis identified a number of rule filings (materials on file) that include a new statement of inquiry for keeping of animals, immunizations order of adoption, and the Emergency order for vaping.

Ms. Davis said that she represented the Board at a recent tour of state the public health laboratories with legislators and legislative staff. The purpose of the tour was to discuss some of the foundational public health services infrastructure requests that the governmental public health system will be making for the 2020 legislative session.

University of Washington School of Public Health, Department of Health Services confirmed Lindsay Herendeen’s appointment as clinical faculty. This appointment along with Cait Lang-Perez’s October appointment assures our team has the access they need to UW Libraries. Ms. Davis said that Representative Harris has invited our Health Impact Review (HIR) team to present information related to HIRs to the House Republican caucus later this week. They are currently wrapping up work on the HIV modernization HIR request by Senator Liias.

Ms. Davis announced that she would be serving on a panel with DOH in work sessions for the Senate Health and Long Term Care committee, as well as the House Commerce and Gaming committee. Both committees have requested information regarding the Board’s emergency rulemaking, the Governor’s executive order, and the incidence of lung injuries related to e-cigarette/vapor-product use.

Ms. Davis said that following the October 9 meeting in SeaTac, the Board received 4 public records requests from 3 different requestors. The requests for records pertain to the emergency rulemaking order to ban the sale of flavored vapor products, specific to staff work, the rulemaking activity, and the public meeting on October 9 in SeaTac. Two requests will be filled by Friday, Nov. 22, and the other remaining requests will be filled by Friday, Dec. 20.

Ms. Davis said that staff have received a significant number of comments related to on-site sewage and reminded Board members that today's discussion was an update and no action is being taken. She said that members of the public will have the opportunity to officially comment on the proposed rule at the rules hearing in 2020.

Ms. Davis asked Lilia Lopez, Assistant Attorney General to the Board to update the Board regarding recent litigation against the emergency rule. Ms. Lopez provided an overview on the litigation including the arguments made by the petitioners and the judge's ruling on those arguments. She said that at this time, we have a Superior Court ruling that the Board's authority to take this kind of action is adequate. She further explained the appeal process and potential next steps.

#### **4. DEPARTMENT OF HEALTH UPDATE**

John Wiesman, Secretary of Health, Board Member, announced that EBT cards for the Women, Infants, and Children Nutrition Program are now available statewide.

Secretary Wiesman said that the Department had just released the 2014-2016 Maternal Mortality Review Panel Maternal Deaths report. Rates of maternal mortality are increasing nationally but Washington rates remain stable and are lower than the national rates. He said a CDC grant through the Preventing Maternal Deaths Act of 2018 will fund implementation of some of the maternal mortality review panel's recommendations, such as the adoption of best practice in maternity care, increasing access to perinatal health care services, and expanding perinatal behavioral health care.

Secretary Wiesman provided an overview of the bill that passed during legislative session and progress on the rule update to align the rules with the implementation of the new law. Components of the proposed rule include a short-form death certificate and a non-certified certificate. He noted that the department was working with State Archives to transfer birth and death records that are 100 years or older, and those that are 25 years or older for deaths, marriages and divorces.

Secretary Wiesman announced that the state public health laboratories started testing for Pompe and MPS I on October 25, 2019, and the Department has submitted a decision package to increase the newborn screening fee to add spinal muscular atrophy to the newborn screening panel.

He said that a dozen legislators and legislative staff participated in tours of the public health laboratories. The purpose of the tour was to give legislators the opportunity to learn about the important work done at the lab, and to understand the need behind the capital budget requests to expand and modernize the lab.

Secretary Wiesman described the department's work to develop the State Health Improvement Plan (plan). He said the current plan is due to expire toward the end of the year, and that a plan is required for public health accreditation. The plan is an opportunity to work with partners to prioritize issues that impact health in the state. It is preceded by an in-depth assessment, which was published earlier this year. Over the last year the committee has worked to develop a vision and mission. Next steps will be to look at the recommendations that come from the report of the Poverty Reduction Work Group and where the intersections are with health and the assessment done earlier in the year.

Stephen Kutz, Board Member spoke about the flu and uptake of the vaccine in his community. Secretary Wiesman said that it is time to get the flu vaccine and discussed the severe flu season that the southern hemisphere has experienced this year. He also encouraged people to frequently wash their hands and stay home when sick.

Vice Chair Pendergrass said that he was pleased to hear that the state is continuing the maternal mortality review. He commented on the importance of sustaining the effort and negative health impacts to the population when these efforts are reduced. He talked about the tobacco plan and the importance of sustaining efforts outlined in the plan with new alternatives that have come to market. Secretary Wiesman spoke about funding for tobacco cessation.

## **5. WELCOME**

Keith Grellner, Board Chair greeted Mary Selecky, Chair, Providence Health Community Ministry Board and Empire Health Foundation Board, and shared his experience working with her over the years. Ms. Selecky welcomed the Board to Eastern Washington. She described her 40 years of experience in public health, including her time as Secretary of Health. She described Providence Health Community Ministry Board and their work to identify needs within the community. She described the establishment of Empire Health Foundation Board. She said that Providence Sacred Heart Medical Center (Center) works in partnership with the state and others to protect the public health. As an example of this work, she shared a simulation exercise involving transportation of a highly contagious patient. She described collaborative work with the Center, the Community Health Association of Spokane and two clinics to help meet the oral health and professional development needs of the community. Providence has also focused on the impacts of opiates on pregnant women, and newborns. The approach they have adopted is "eat, sleep, console." She talked about efforts to promote early literacy this effort includes developmental screening of children with family doctors and physicians and collaboration with Rotary, libraries and other entities.

Ms. Selecky talked about Stevens County and the challenges they experience with food insecurity. She described efforts to improve coordination among the 16 food banks that cover the 3 counties (see flyer). She said that improved collaboration has resulted in more than 38,000 pounds of locally grown fresh vegetables and fruit being served at the food banks this year.

Empire Health Foundation is almost decade old, it works with partners across Eastern Washington to develop bold, innovative, upstream strategies that change systems and policies to tackle the region's health problems and improve health. She described a

partnership with Catholic Charities, to reunite families where there has been substance abuse and children in foster care. This partnership has graduated 60 families into stable housing, and reunited families. Fall 2011, they launched the Childhood obesity Initiative, the goal was to reduce the BMI in kids by transforming school food service healthy scratch cooked recipes. By year 5 in Cheney, the BMI index of kids had decreased statistically by 4.5 percent. Today, the program is in 26 school districts, and there are 7 million healthy lunches served annually. They are working with OSPI to take the program statewide. Empire is not paying for all this, they just sparked the idea. Collaboration is key, and they have to be patient. Ms. Selecky thanked the board for their work, and congratulated the department on the WIC card.

Fran Bessermin, Board Member said that she and Mary worked together in Stevens County for about 10 years. She shared a story about food insecurity and that rural areas may have no stores that provide fresh vegetables or fruit. In the Nine Mile Falls school district they have “bites to go”. There’s about 20,000 children that receive a box of food to sustain the child for the weekend. Second Harvest is their food bank that provides the food.

Ms. Selecky mentioned that the work of the Hunger Coalition is fueled by community benefit funds from Providence. She mentioned the importance of the partnership with Spokane Regional Health District and Eastern Washington University in this work. Member Bessermin commented on the considerable amount of money that Providence spends on community projects every year.

Member Kutz asked Ms. Selecky to talk to someone about loss of funds for obstetrics (OB) care. He talked infant mortality and the importance of access to prenatal care. Losing OB care in Coulee City and Omak is catastrophic. He said that impacts affect tribes and entire community, and that rural areas are particularly affected.

Ms. Selecky said she thought Member Kutz was referring to Okanogan County. She said she would look into Coulee City and Tonasket in Okanogan County. She thought that Wenatchee would be the better hub to serve that area. Empire Health prides itself in dealing with Health Equity and Health Assessments, and works with the Colville tribe, Kalispel, and Spokane tribes to address historical boarding school trauma among elders.

Secretary Wiesman announced that tomorrow there would be a public meeting regarding Emergency Medical System at the Spokane Fire Training Center from 9am-noon (4<sup>th</sup> of 5 public meetings). At the meeting they will review the findings of American of College Surgeons regarding the EMS trauma system. He thanked Ms. Selecky for carrying the public health flag.

## **6. SPOKANE REGIONAL HEALTH DISTRICT—PAST, PRESENT AND FUTURE**

Bob Lutz, Board Member and Health Officer, Spokane Regional Health District, introduced leadership from the Spokane Regional Health District (SRHD). Amelia Clark, Administrator, Spokane Regional Health District, welcomed the board to the Spokane Regional Health District, which includes Spokane and Spokane Valley, City of Millwood, Liberty Lake, Deer Park. This is officially day #61 for Ms. Clark, she moved here from Indiana where she spent most of her career. (see presentation on file). Ms.

Clark reminded the board of changes in the region since the 1970's. She talked about collaboration and upstream efforts.

Breean Beggs, Spokane Regional Health District Board of Health, talked about the exciting progressive changes in Spokane and the SRHD and the make-up of the board and governance. He talked about the diversity of opinions on the board such as the vaccine controversy. He mentioned some of the issues such as suicide and opiates that have huge impacts on the community and how we need our local health district to tell us the truth.

Ms. Clark continued with the slides (see presentation). \$500,000 in Foundational Public Health Services (FPHS) has been received by the SRHD.

Vice Chair Pendergrass thanked Ms. Clark for sharing the breadth of activities and the interesting blend of old and new such as Adverse Childhood Experiences and trauma in children. Persistence is important when addressing infection disease and he applauded SRHD for paying attention. He is impressed with the breadth of the board and folks they've engaged. Inland Empire is on the grow. He shared a WA Post article that described an Emergency Services Program and commented maybe Emergency physicians could reach out to the smaller communities such as Omak and Colville.

Ms. Clark responded regarding the smaller communities and the impact on those critical services and issues such as maternal mortality.

Member Kutz started his health career in 1971, and he reminisced on the Spokane region in the 70's. In regards to Health Disparities, he acknowledged the Spokane Tribe and beautiful land. He encouraged Ms. Clark to reach out to tribal partners, including Tony Lodge, with the NATIVE project in Spokane to see what can be done with health disparities and those most impacted.

Secretary Wiesman thanked SRHD and appreciates support for robust public policy conversations. This is a good example of how it's done right. Kudos to their website, it doesn't just look at data, but it shows they move to action. Partnerships are an important asset for their work, as are coalitions and tribal engagement. He officially welcomed Ms. Clark and shared his excitement for her career. He asked about the differences she sees. Ms. Clark commented on the number of people who spend time outside in Washington. In Indiana, people drive everywhere, and in Washington people are encouraged to walk or ride bikes. The county sets money aside here for infrastructure and the parks system. The speed limit is reduced in some areas and it's interesting to view. Environmentally we approach things differently here such as trash receptacles.

Member Lutz said it's exciting to have Breean Beggs as the Chair of the Spokane County Board of Health but also as a public official to enable and empower them to what needs to be done. Member Lutz appreciates both Breean and Amelia, and welcomed her to this position, saying that she brings a new approach to the district to do what's right for our community.

Member Kutz asked about tornadoes. Ms. Clark said she can manage emergencies such as tornadoes, ice storms and floods like nobody's business.

The Board took a break at 10:15 a.m. and reconvened at 10:30 a.m.

## 7. PUBLIC COMMENT

Brad Bellinger, Lilac City Vapor, commented on the flavor ban. He described the drop off in customers, the need to lay off employees. He said the hardest part is seeing people come in and not be able to get anything, and say they'll go get cigarettes, or go to Idaho, or order online. The main thing is, for the older crowd that's trying to get off cigarettes, the self-defeat knowing they're going to buy cigarettes. CDC is now saying the problem is 90% due to THC Vitamin E Acetate. He asked the Board to reconsider the flavored vaping ban to give people access to alternatives.

Clay Shuman, Yield Farms, co-owner of a 10,000 square foot grow operation that includes production of cannabis oil, edibles, cartridges and disposable pens. Mr. Shuman has a science background and he discussed the process of terpenes and the value of economics in this business. Mr. Shuman proposed adding the bolded language below to chapter 69.50 RCW to read under section (2) (a); "Characterizing flavor" means a distinguishable taste or aroma, or both, other than the taste or aroma of marijuana, derived from compounds identified in the cannabis sativa plant, regardless of source, imparted by a marijuana product. He also proposed further language in sections 3, 4, 5 & 6 and provided the Board with this paperwork. He indicated that lead, pesticides and other chemicals were the source of illness.

Travis Jent, Vapor Lounge, implored the Board to reconsider the vaping ban. He said that Vitamin E has never been found in flavored vaping products, only in THC. He said that we do know what's in vaping products, how they are made and so does the FDA. We can debate what we think about the ingredients, but we know what they are. We could remove any products necessary. An unintended consequence of this ban is the black market, and it's much more difficult to control. A comment that resonated at the October meeting was about people that started to smoke at an early age, one piece not mentioned was that those youth started at a young age when there wasn't flavor.

Shaun D'Sylva, Fat Boy Vapors, said he was at the hearing on October 9, he's a Board member of WA Smoke Free, owns 5 stores, a manufacturing company and is heavily involved in helping people stop smoking. He said he resents the Governor and others for saying the industry is trying to addict young kids. Many of his fellow industry members would say vaping is not for kids. He has helped 80,000 people stop smoking in the last 7 years. He has the data. After the 10/10 meeting, he sent a letter to the Chief Scientist and the answer was all CDC information. His father was the chief mathematician for an aircraft company, and he grew up with science, logic and fact. The CDC came out the day after the legal action saying that 29 out of 29 samples of THC had Vitamin E acetate. In CA they had pesticides off the charts for illegal cartridges. 90% of his customers' vape flavors because they wanted to get away from tobacco. Mr. D'Sylva talked about JUUL studies. Kids are vaping for the hit and buzz, the ban has thrown the baby out with the bathwater. It's a fallacy supported by public health officials.

He wishes members would take the time to review information. Cigarette sales are up 5% in Massachusetts, and they have a vaping ban.

Jaclyn Gallion, Informed Choice Washington (ICW), said DOH actions are transparent in their misrepresentations. She spoke to exemptions when creating this false representation. She talked about transparent failure to school rules and exemptions. The state is failing in its legal duty to pursue policies without considering mental or physical health outcomes of students. They are hesitant because of transparent failure. We need vaccine policy reform.

Evita Krislock, Earth Ministry, is a Board member for the Sierra Club and is working to minimize standards of PFAS release on the Spokane River. This is our heart blood and who we are. Water is a vital component in our lives, and if we don't protect it to the highest standard, what will we say when our future generations say what did you do? Ms. Krislock implored the Board to create policy for the highest standards, saying we can't afford not to for our future.

## **8. CHAPTER 246-80 WAC VAPOR PRODUCTS AND FLAVORS—UPDATE ON IMPLEMENTATION, OUTBREAK INVESTIGATION AND DEPARTMENT OF HEALTH RECOMMENDATION**

Member Wiesman invited Kathy Lofy from the Department of Health, Sara Cooley Broschart from the Liquor and Cannabis Board, and Alexandra Montañó from the State Board of Health to provide an update on vapor products and the outbreak investigation. Dr. Lofy provided a brief update on the investigation of vaping-associated lung injury (VALI), and recent information about vitamin E acetate and the association with lung injury (presentation on file, Tab 08). She highlighted two Morbidity and Mortality Weekly Reports (MMWR) that had been recently published on the topic of vitamin E acetate, discussed reporting of VALI in Washington, and talked about what is still unknown about the outbreak. Ms. Broschart shared information about compliance and enforcement of the flavored vapor product ban that the Board passed in October (presentation on file, Tab 08). She discussed steps that have been taken for both cannabis and non-THC vapor products, challenges in enforcement, and ongoing collaborative work with other state partners. Finally, Ms. Montañó referred Board members to the materials in their packets, including possible action for the Board to consider.

Member Kutz asked if any of the cases admitted to the hospital with symptoms that did not have a history of using vapor products. Dr. Lofy said that the case definition for the outbreak requires, among other components, that the individual has a history of vaping. Member Kutz asked if there is information about the percentage of cases that are 18 years of age and younger. Dr. Lofy shared that about 14% of patients nationally are under 18 years old and in Washington the data is broken down by decades and that information is available on the Department's website. Secretary Wiesman followed up and said that four cases in Washington are under the age of 20. Member Kutz asked a follow up question about vitamin E acetate and whether or not the numbers reported reflect a total percentage of the volume of the e-liquid. Dr. Lofy indicated that is correct. Member Kutz reflected on testimony from the October Board meeting and asked if vitamin E acetate is a derivative of vegetables, and Vice Chair Pendergrass said that it is not. Member Kutz asked if anyone is using vaping products without THC or nicotine, and reflected on tobacco companies being prohibited from artificially adding nicotine to



cigarettes. Vice Chair Pendergrass discussed the tobacco settlement and the prohibition of adding nicotine to combustible products. Member Kutz asked if the Centers for Disease Control and Prevention (CDC) are looking at the concentration of THC and nicotine in the samples they collect from patients. Dr. Lofy said that she does not know if those tests are being done, and said that the Department has sent specimens from five patients to the Food and Drug Administration (FDA) for testing but have not received the results yet.

Vice Chair Pendergrass discussed the challenges of vaping liquids and the content of the products, the findings from the MMWR provided in the packets, and further challenges of protecting youth from becoming addicted to nicotine. He asked Member Lutz to share information about the New York Times op-ed article that came out in the recent weeks. Vice Chair Pendergrass said that the op-ed piece talks about how the flavor may not be the issue itself but it may be the vehicle, and the need to take what has been learned from cigarettes and apply it to vapor products. Member Lutz further discussed another article that looked at what happens when you heat products, such as vitamin E acetate, to very high temperatures. He said that one of the break down products of vitamin E acetate is ethanone, which is a known toxin to lung tissue. He discussed one of the MMWR articles and asked Dr. Lofy to discuss the limitations of convenience samples. Dr. Lofy said that the procedure used is typically not done unless a patient is very sick and although the sample is a convenience sample, the fact that the specimens came from 10 different states helps to strengthen the evidence. Member Lutz said that we still don't know what the causative agent is and the 120 day flavor ban should be augmented by the findings around vitamin E acetate. Vice Chair Pendergrass discussed other possible components that may be important in the outbreak investigation.

Secretary Wiesman said that when the outbreak began many people were hopeful that one thing would be identified as the cause but as the investigation continues, it sounds like vitamin E acetate may be playing a role but it is not fully explaining what is going on. He asked Dr. Lofy if that is a fair understanding at this point based on the information we have and what we are hearing from partners. Dr. Lofy agreed and said that there may be a background of lung injury that we have not been recognizing up to this point. She discussed case reports of other cases of lung injury thought to be associated with vaping that go back several years. Providers may be picking up more cases now because they are looking for them specifically.

Kurt Hilt, Board Member commented that 29 samples is a remarkably small sample and asked Dr. Lofy what she thinks it would look like to be able to move from a diagnosis of exclusion to a diagnosis that is more certain. Dr. Lofy asked for clarification and then said that it will likely be a short time until we know more about vitamin E acetate because the CDC is already working on studies. She also said that animal studies will likely be undertaken rather quickly to better understand the impact of vitamin E acetate on the lungs. In terms of gathering additional evidence around whether or not there has been a low level of lung injuries associated with vaping, that process will likely take much longer. Secretary Wiesman commented that it is typical for investigations of this type to start off with definitions that exclude a number of things first and then are modified over time. Member Hilt asked what the expectation is at 120 days if the Board adopts a motion to ban vitamin E acetate. Secretary Wiesman said that the emergency

rule gives time for additional research to happen and removes the product from the regulated market. Member Hilt asked if 120 days is enough time and Dr. Lofy said that we will have a better picture of vitamin E acetate in 120 days than we do now. Secretary Wiesman also commented on possible legislation for the upcoming legislative session.

Member Kutz asked clarifying questions about the results of one of the MMWR articles. He asked about youth modifying vapor products and asked if data about people modifying their products is being collected. Dr. Lofy said she is nearly certain that information is being collected.

Chair Grellner asked if any agencies or states have taken action on vitamin E acetate. Ms. Broschart said that Colorado took action in their rules to ban three additives from products including vitamin E acetate. Member Lutz said that Ohio has also banned it from all products.

Secretary Weisman thanked the vapor product retailers that have responded to the last emergency rule, and the Liquor and Cannabis Board (LCB) for their dedication to helping people come in to compliance. He further thanked public health, health care providers and facilities, and the laboratories that have been working hard on the investigation. He said that the evidence for vitamin E acetate is strong enough to say that it should not be in our products and it is prudent for the Board to take action while the CDC, FDA, and others work on gathering more data. Secretary Wiesman said that he is not inclined to say that the Board should remove the existing flavor ban because there may potentially be more causes and flavors may be involved in some way.

Member Kutz asked if any of the manufacturers in the state are putting vitamin E acetate in their products and Ms. Broschart stated that there is currently not a requirement for ingredient lists or disclosure for non-THC vapor products. She said that LCB has recently required a marijuana vapor product ingredient disclosure form and they have received a very small subset of those forms thus far. She further said that they do not believe vitamin E acetate is an ingredient that is well used in the cannabis market. Secretary Wiesman said that according to the FDA, none of the nicotine vapor products registered with them list vitamin E acetate as an ingredient. Member Kutz asked if taking the action to adopt an emergency rule would have any impact in the state. Ms. Broschart said that it would provide clarity for the very few manufacturers that may be adding it to products.

Member Hilt stated that he agrees with Secretary Weisman on his comments but not on the conclusion. He said that he needs a little more evidence and is not in support of adopting the emergency rule at this time.

Chair Grellner said that he is not going to oppose the motion but he is concerned that the Board is using the emergency rule to fill in for the lack of known science. He said that he needs to defer to Board members with more medical expertise but he doesn't intend to oppose the motion.

Member Lutz commented that public health science moves incrementally and thinks that is what is happening here. He said that if we do not know something is safe he

would rather be cautious than learn after the fact, and stated that we are trying to prevent additional injuries from occurring with the science that we have currently.

Member Weisman commented that we need to be prepared to be nimble as we learn more about the science. Vice Chair Pendergrass said that the FDA did not take on regulations of the vaping products and now we are playing catch up. He said that we need to do something in the short term to take action but we will need to consider this issue in a much broader way down the road.

#### Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt the following motion:

**Motion:** The Board adopts the emergency rule to prohibit the sale of vapor products that contain vitamin E acetate. The Board directs staff to file the CR-103E to create a new section in chapter 246-080 WAC, which will become effective immediately upon filing with the code reviser.

**Motion/Second:** Wiesman/Kutz. Motion Approved. Member Hilt opposed, Chair Grellner abstained

## 9. PETITION FOR RULEMAKING, WAC 246-100-197, RABIES – MEASURES TO PREVENT HUMAN DISEASE

Stuart Glasoe, Board Staff introduced the item and reminded Board members of their options to deny or accept petitions under the Administrative Procedures Act. He described the petition from Gayle Wyche requesting a rule change to authorize licensed veterinarians to provide medical exemptions for rabies vaccination of dogs when contraindicated based on the animal's health. He noted that the rules were last updated in 2017 to align with national standards of the 2016 Compendium of Animal Rabies Prevention and Control and said continued consistency with the standards is important. He drew attention to two motions drafted for Board consideration and introduced Lauren Jenks of the Department of Health

Lauren Jenks, Department of Health, said there are circumstances where dogs should not receive a rabies vaccination because it may harm the animal. The current rule requires pet owners to vaccinate animals in accordance with veterinarian advice, and it is within veterinarian scope of practice to advise that an animal not be vaccinated for health reasons. She explained that an exemption is not practical given the nature of rabies regulation and reiterated that consistency with the 2016 Compendium is important. She said she learned from the petition that perhaps this information—discretion in veterinarian practice administering rabies vaccinations—is not well communicated to veterinarians. The Department recommended that the Board deny the petition for rule change and instead have staff reach out to the Washington State Veterinary Medical Association and the Veterinary Board of Governors to communicate with veterinarians on their discretion in these rare cases. Vice Chair Pendergrass asked for clarification whether the current rule does not allow an exemption. Ms. Jenks said what is more relevant is the scope of practice that allows veterinarians to not administer vaccinations where it may endanger the animal's health. Member Kutz talked about a personal experience where a cat encountered a bat and he was told by the veterinarian

that if the cat became sick for any reason within 90 days, he would put the cat down. With rabies, he said he believes veterinarians well understand what needs to be done making those hard decisions and said he supports them.

#### Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt one of the following motions:

**Motion:** The Board denies the petition for rulemaking to amend WAC 246-100-197, Rabies-Measures to Prevent Human Disease, to include a medical exemption for rabies vaccination of dogs. The Board directs staff to follow up with the Veterinary Board of Governors, the Washington State Veterinary Medical Association, and the Washington Department of Health to explore approaches to clarify policy and to educate veterinarians on rabies vaccination practice in cases where it endangers the animal's life. The Board directs staff to notify the petitioner of its decision.

**Motion/Second:** Kutz/Hilt. Approved unanimously.

The Board recessed for lunch at 12:28 p.m. and reconvened at 1:36 p.m.

#### **10. UPDATE—PER- AND POLYFLUOROALKYL SUBSTANCES (PFAS) DRINKING WATER STANDARDS RULE REVISION, CHAPTER 246-290 WAC, AND LABORATORY CERTIFICATION AND DATA REPORTING, CHAPTER 246-390 WAC**

Stuart Glasoe, Board Staff introduced the update on the rulemaking project and the draft rules. As background, he reminded the Board that they accepted a petition and initiated rulemaking in late 2017 to explore the issues, and subsequently provided direction to the Department of Health in summer 2018 on the use of SALs—renamed “state action levels” in the draft rules—as the preferred regulatory mechanism for PFAS chemicals and other unregulated contaminants. He noted that the Department’s update included a recommendation to file a CR-101 and initiate rulemaking to revise related requirements of the Board’s Laboratory Certification and Data Reporting rules. He drew attention to the draft motions for Board consideration at the presentation’s conclusion, and he introduced Lauren Jenks, Mike Means, and Barb Morrissey of the Department of Health to give the update (see presentation on file).

Ms. Jenks noted that the Department is about to embark on extensive stakeholdering for the draft rules with public workshops across the state. She summarized the status of the rulemaking and related activities and unveiled the draft PFAS standards. Ms. Morrissey summarized the process used to develop the draft standards and their comparison with PFAS standards developed elsewhere in the country. Mr. Means summarized draft changes to the regulatory structure, requirements for the use of SALs, needed changes to the Board’s companion lab rules, and next steps in the rulemaking.

Chair Grellner informed the Board that the Environmental Health (EH) Committee recommended the motion to initiate rulemaking to update the lab rules. Discussion followed, with many questions. Member Kutz said he has a list of questions and support this action. He asked, if the chemicals accumulate and are excreted, do they continue to accumulate or do they decrease over time if you can get away from the source? Ms.

Morrissey, confirmed that PFAS can be eliminated but the chemicals have long half-lives. Communities that have installed filtration and done biomonitoring provide good evidence that levels do drop. He next expressed concern with contaminated aquifer discharges/impacts to surface waters and asked if that is a next step. Ms. Jenks said that really goes to the environmental purview of the Department of Ecology and its development of a cleanup standard. Ms. Morrissey added that the Department of Health is assessing PFAS levels in fish tissue. PFOS appears to be the main compound that accumulates in the aquatic food chain and that information could result in fish consumption advisories. Member Kutz asked, and Ms. Jenks clarified that there are eight sites across the country that are being sampled. Member Kutz asked for clarification of the timeline, sources, and use of firefighting foam. Ms. Morrissey said production started in the 1940s with use peaking in the 1960s-1980s in terms of firefighting foam, but there are many other sources. Member Kutz said he is interested in pushing to Ecology sooner than later and engaging with tribes on the environmental issues. Ms. Jenks added that the Department of Health is collaborating with the Department of Ecology on the chemical action plan, and the purpose of fish advisories is to help push cleanup not to have people consume fewer and fewer fish. Member Kutz asked if cleanup of hot spots is even possible. Ms. Jenks said it's possible and again referred to the purview of state and federal environmental agencies. Ms. Morrissey added that we are in the early stages of this work, the focus is on remediation of soil and groundwater, and mentioned experimentation with portable incinerators and other new technologies. Member Kutz asked about vulnerability of the Rathdrum aquifer to contamination. Mike LaScuola of Spokane Regional Health District stepped up to say they have no data on PFAS in the aquifer like they have data on trace levels of PCBs. Studies are underway to provide more information.

Vice-Chair Pendergrass asked if any PFAS are naturally occurring. Ms. Jenks said no. He asked if we can engineer a bacteria to eat them. Ms. Jenks said the focus is on incineration to destroy the chemicals. He asked about the status of efforts to develop safe alternatives for use in fire-fighting foam. Ms. Morrissey gave a couple examples of alternatives being used but added military specifications at FAA airports can present a barrier to use of alternatives. Mr. Means clarified that there is movement toward performance specifications to accommodate alternatives. Vice-Chair Pendergrass then asked about the safety of newly developed alternative compounds. Ms. Jenks said that is a great question for all toxics policies where newly created chemicals may not be tested for their impact on health and sometimes the use of alternatives turns out to be regrettable.

Secretary Wiesman asked about PFAS controls with other product sources. Ms. Morrissey said first priority has been to eliminate unnecessary applications that contribute to PFAS residue in food and water. The state legislature took a class approach banning all applications with firefighting foam and food wrappers. California started work on carpets and that industry is moving rapidly away from PFAS chemicals. The replacements are persistent—a regrettable substitute. The 2019 legislature also passed a bill allowing the Department of Ecology to designate priority products for further regulation for five classes of harmful chemicals, one of which is PFAS. Vice Chair Pendergrass mentioned earlier work on flame retardants in clothing and the potential harmful tradeoffs in substitute products. He also asked for clarification of a

chemical mentioned in the presentation—fluoranthene. Mr. Means said it is a chemical on the synthetic organic contaminant test panel.

Jill Wood, Board Member asked about EPA’s work on a possible PFAS MCL. Mr. Means clarified that the next step is expected in December, the step is simply to make the statement as to whether or not they will go forward with work setting an MCL, and there is no public indication what the decision will be. Member Wood asked about the specificity of the pending lab rule CR-101 filing for certain contaminants, or will it be more general in scope? Ms. Jenks said the department’s intention is to add the additional chemicals and do some additional cleanup. Mr. Glasoe said it has not yet been written and can be shared when drafted. Member Wood asked about requirements for notification of water systems and investigation of the cause of contamination. Mr. Means said the intent is to investigate only to the extent of the utility’s control such as collection and analysis of samples. He added that follow-up language regarding actions “as directed by the department” is fairly standard historical language. Member Wood added that cleanup, evaluation, and installation of treatment can be costly so it’s good to hear that it’s work internal to the water system.

Member Lutz asked about the chemicals listed for removal from the lab rule. Ms. Jenks explained that it is partly due to evolution of test panels. Mr. Means added that the intent with two of the chemicals is to lower the monitoring levels. Member Lutz asked about current production of PFAS listed in the draft rule. Ms. Morrissey summarized recent regulation, production and use of the different chemicals. Member Lutz asked why the one draft PFAS standard (PFHxS) is notably higher than standards in other states. Ms. Morrissey said the reason it is higher than the other compounds is that it is not as toxic, and the reason it is higher than standards in other states is that the department made different assumptions in its modeling. Member Lutz observed that we have thousands of chemicals, they are in the ecosystem worldwide, and they probably should not be produced if we want to apply the precautionary principle to this class of chemicals.

#### Recommended Board Actions:

The Board may wish to consider, amend if necessary, and adopt the following motion:

**Motion:** The Board accepts the recommendation to revise chapter 246-390 WAC, Drinking Water Laboratory Certification and Data Reporting, and directs staff to file a CR-101, Preproposal Statement of Inquiry, to initiate rulemaking.

**Motion/Second:** Pendergrass/Bessermin approved unanimously

## 11. UPDATE—ON-SITE SEWAGE SYSTEM RULE REVISION, CHAPTER 246-272A WAC

Chair Grellner introduced Todd Phillips, Department of Health to provide an update on the rulemaking project and draft rules for chapter 246-272A WAC (see presentation on file). Mr. Phillips discussed the purpose and scope of the rule, the rulemaking process, key changes and issues raised during public review of the draft rule, and next steps in the rulemaking project.

Mr. Phillips said the rule aims to protect public health by minimizing the potential for exposure to sewage and adverse effects of discharges from on-site sewage systems.

Mr. Philips highlighted key changes in the draft rule including changes to local management plans, property transfer inspections, repairs, remediation, and minimum lot size and land area. For each of the highlighted issues he summarized features of the draft rule, issues raised during public comment, and adjustments made to the draft based on the comments received. He summarized next steps in the rulemaking project and plans to complete the work in 2020.

Member Wood thanked Todd for his presentation and mentioned her experience as a part of the work with statewide environmental health directors on the management plan issues. She said she is looking forward to seeing the next round of language on these issues. Member Kutz listed several challenging issues associated with the use/misuse of on-site sewage systems that stress out the systems and that need attention in the regulations to protect future homeowners. He also mentioned that the regulations do not really apply to tribes and they don't get much technical support with these issues. Mr. Phillips said the property transfer inspection requirements aim to catch and correct problems and protect future homeowners. Chair Grellner reflected on the challenges of creating statewide rules for on-site sewage systems when conditions and factors vary significantly over time and geography. He voiced support for the increase in minimum lot sizes and also said he understands the hesitation concerning management plans due to the challenges and cost of the work, using the task of inventorying systems as an example.

The Board took a break at 3:15 p.m. and reconvened at 3:32 p.m.

## **12. BRIEFING—CHAPTER 246-500 WAC, HANDLING OF HUMAN REMAINS (CR-101 FILING)**

Chair Grellner announced the item and introduced Chris Trent, Board staff. Chris Trent, Board Staff said the next item was an informational notice on a CR-101 filing for Chapter 246-500 WAC, Handling of Human Remains that required no action by the Board at this time. She said that the Legislature passed ESSB-5001 during the 2019 legislative session, which legalized two new methods for human disposition: Alkaline Hydrolysis and Natural Organic Reduction. The new law will take effect on May 1, 2020. Regulation of facilities and practices handling human remains primarily falls under the authority of the Washington State Department of Licensing's Funeral and Cemetery Board, which is currently developing the proposed rules. However, during passage of the new law, concerns related to the potential viability of communicable diseases and other by-products after disposition of the remains by Natural Organic Reduction were raised by Washington State Department of Health (WSDOH) personnel, including State Epidemiologist for Communicable Diseases, Dr. Scott Lindquist. Ms. Trent told the Board that a preliminary literature review on the potential for residual communicable disease viability conducted by the Department of Ecology did not identify serious concerns; however, the issues would be more thoroughly explored during the rulemaking process. Ms. Trent said the Department of Licensing suggests that the issues raised would be more appropriately handled by the Board under RCW 43.20.050. In response, Michelle Davis, Executive Director to the Board, asked staff to file a CR-101, Preproposal Statement of Inquiry, to initiate rulemaking and investigate possible revisions to Chapter 245-500 WAC. Ms. Trent informed the Board that she would be finalizing preparation of the CR-101 during the week of November 25, 2019.

Vice Chair Pendergrass: Unintended consequences can arise – it's true that many people have been buried in many ways, and they have. Pasturell pastis and other things can be involved in the decomposition in of humans. And where you place them can be of concern.

### **13. UPDATE—LEGISLATIVE STATEMENT**

Michelle Davis, Executive Director said that in January she would be asking the Board to approve an updated legislative statement and referred to the 2019 statement (materials on file). She described possible updates to the statement based on 2019 legislative action and staff recommendations.

Chair Grellner suggested adding a statement about the HIV statute modernization bill. He also said that his staff has heard that Liquor and Cannabis Board (LCB) may be considering changes to their laws and asked if there was more information about what may be coming. Ms. Davis discussed potential bills about vapor products and THC products as a result of the Governor's Executive Order but was unsure of other changes to LCB authority. She asked Member Wiesman if he could comment on the Governor's priorities. Secretary Wiesman said that climate continues to be a top priority as well as implementation of behavioral health. Ms. Davis suggested the Board might support legislation related to a vapor products. Chair Grellner discussed next steps for developing a draft for the Board to review Vice Chair Pendergrass asked for a specific deadline. Ms. Davis said she would send a draft document for review this week and will ask for comments by December 10. Member Lutz recommended additional topics that included violence (domestic, partner violence), ACES, and homelessness. Vice Chair Pendergrass expanded on the recommendations to discuss gun violence. Member Wood talked about a potential reorganization of chapter 70 RCW.

### **14. 2020 PROPOSED MEETING SCHEDULE**

Ms. Davis presented the proposed 2020 meeting schedule (materials on file, Tab 14a) for the Board's approval.

Member Wood said that October 14, 2020 is a date that is held for the environmental health directors meeting so there may be some conflicting schedules and asked if the Board could consider meeting on Tuesday, October 13<sup>th</sup> instead. Member Kutz said he has a hard conflict on October 13<sup>th</sup>. Chair Grellner said he liked the idea of adopting the schedule today as proposed and then potentially making a revision at the January meeting if necessary.

**Motion:** [The Board approves the proposed 2020 meeting schedule.](#)

**Motion/Second:** [Kutz/Bessermin. Approved unanimously](#)

### **15. BOARD MEMBER COMMENTS**

Vice Chair Pendergrass commented on the New York Times opinion piece from November 12 about vapor products. On November 16, the Washington Post published an article titled, "The most remote emergency room – life and death in rural America". He also commented on the Netflix show, "Inside Bill's Brain". Member Kutz asked that staff follow up with links to those materials.

Chair Grellner reflected on his comments about the timeline for the on-site sewage rulemaking project. He also thanked the Board and staff for another great year.



## **ADJOURNMENT**

Keith Grellner, Board Chair, adjourned the meeting at 4:03p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Keith Grellner, Chair

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