

# WASHINGTON STATE BOARD OF HEALTH

## Final Minutes of the State Board of Health

August 9, 2023

Hybrid Meeting

ASL (or CART) and Spanish interpretation available

Physical meeting at:

Capital Campus, John A. Cherberg Building, Conference Room ABC

304 15 Ave SW, Olympia, WA 98501

Virtual meeting: ZOOM Webinar

### State Board of Health Members present:

Keith Grellner, Chair

Kelly Oshiro, JD, Vice Chair

Patty Hayes, RN MN

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

Dimyana Abdelmalek, MD, MPH

Stephen Kutz, BSN, MPH

Socia Love-Thurman, MD

Kate Dean, MPA

### State Board of Health Members absent:

Melinda Flores

### State Board of Health staff present:

Michelle Davis, Executive Director

Melanie Hisaw, Executive Assistant

Michelle Larson, Communications

Manager

Anna Burns, Communications Consultant

Stuart Glasoe, Health Policy Advisor

Molly Dinardo, Health Policy Advisor

Andrew Kamali, Health Policy Advisor

Jo-Ann Huynh, Administrative Assistant

Grace Cohen, Department of Health

Hannah Haag, Community Outreach

Coordinator

Lindsay Herendeen, Health Policy Analyst

Cait Lang-Perez, Health Policy Analyst

Miranda Calmjoy, Health Policy Analyst

Lilia Lopez, Assistant Attorney General

### Guests and other participants:

Anneke Jansen, Department of Health

Jeremy Simmons, Department of Health

Todd Phillips, Department of Health

Kelly Cooper, Department of Health

Keith Grellner, Chair, called the public meeting to order at 9:02 a.m. and read from a prepared statement (on file). Board Member introductions followed.

## 1. APPROVAL OF AGENDA

**Motion:** Approve August 9, 2023 agenda

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

## 2. ADOPTION OF JUNE 14, 2023 MEETING MINUTES

**Motion:** Approve the June 14, 2023 minutes

**Motion/Second:** Member Kutz/Love-Thurman. Approved unanimously

## 3. PUBLIC COMMENT

Chair Grellner opened the meeting for public comment and read from a prepared statement (on file), allowing for 3 minutes per person.

Melissa Leady, public participant said the Department of Health (Department) COVID-19 report provided no data on the bivalent booster and the information was shared in a utilitarian way to support the narrative. M. Leady encouraged the Board to look closely at the bivalent booster data and to stop recommending vaccines if the data isn't showing effectiveness.

Bill Leady, resident of Clark County recognized many benefits of the work at the Department such as safe drinking water, food safety, Woman, Infant, and Childrens (WIC) program and many programs that go unnoticed or taken for granted. B. Leady talked about how trust in public health is important. B. Leady said the public health narrative was wrapped in political misinformation and disinformation campaigns and is now spending \$15 million dollars to change the public perception. B. Leady talked about the loss of public trust when livelihoods are considered non-essential, when the narratives are everchanging, when the public is seen as having evil intentions and the importance of factual information.

Gerald Braude, Jefferson County, talked about the Vaccine Adverse Reporting System (VAERS) report and four more deaths from the COVID-19 shot, numbers increasing from 2,019 to 2,023. G. Braude talked about reports of first-time blood clots. G. Braude talked about the dangers of the vaccine, and the evidence against shots preventing transmission, especially for our youth.

Lisa Templeton, Informed Choice Washington, talked about trust-based public health approaches. L. Templeton shared the comments last month of Dr. Kevin Bardosh, Affiliate Assistant Professor at the University of Washington (UW), at a House Oversight Subcommittee hearing in DC. Dr. Bardosh said their analysis strongly suggests that mandatory COVID-19 vaccine policies have had damaging effects on public trust, vaccine confidence, political polarization, human rights, inequities, and social well-being.

Sue Coffman, Clallam County, said under the law people don't yield sovereignty to public servants and agencies, and the public insists on remaining informed to have control. S. Coffman said the law was ignored for the last 3 years, and that the public was ignored, disrespected, and betrayed.

Liz Stumpf, lifelong WA resident and residing in Everett, talked about WAC 246-260-031 and the petition they submitted. L. Stumpf thanked the Board for listening and shared their story about a lifelong passion and skill for swimming, and a diagnosis of MS at age 26. With the disease progression and physical limitation to a wheelchair, swimming is

critical. L. Stumpf cannot open the door handle from their wheelchair in the pool facility due to the current Board pool safety rule. L. Stumpf advocated for change to the pool child safety law regarding the level of the latch.

Natalie Chavez, commented on a recent Vaccine Advisory Committee (VAC) meeting, and said it seemed community voices didn't matter, as public comment was last on the agenda, and people were given 1.5 minutes to comment. N. Chavez appreciates the Board having public comment at the beginning of the meeting. N. Chavez talked about ongoing cardiac risk and incidents from the COVID-19 vaccine and shared a cardiologist comment that COVID-19 mandates were a disaster and induced myocarditis, and research is urgently needed.

Craig Boothe, President of Lake Chelan Lions Club and Chairman for Sight, asked for changes to WAC 246-760-030, to allow use of otoacoustic emissions (OAEs) in screening for hearing anomalies. C. Booth said many hospitals and doctors are now using OAE to screen children up to five years old. C Boothe said the Lions Club does the majority of screenings in Washington and the United States, and believes using OAE will give the ability to screen more students accurately. C. Boothe said using both OAE and pure tone auditory screening methods are good for testing early, saying about 10% of children have hearing problems and 2% have serious hearing issues.

Bill Osmunson, a dentist for 5 decades, talked about years of requesting the Board to remove the fluoride recommendation from their website. B. Osmunson said there is significant IQ loss from lead and fluoride toxins, and the Washington Board of Pharmacists label fluoride a prescription drug. B. Osmunson said that most developed countries do not require fluoridation, and asked what empirical scientific evidence the Board has on this public health policy.

Bill Lundin, Chairman of Northwest Lions Foundation, said over 200 Lions Clubs provide school hearing screenings to about 80,000 to 100,000 kids. B. Lundin urged the Board to adjust the WAC to allow otoacoustic emissions (OAEs), along with the pure tone auditory screening methods. B. Lundin said the current auto acoustic equipment takes time, and teachers want screenings to go fast. If children fail the OAEs, they can be put through other screenings. B. Lundin advocated for an immediate start, saying the money available now in grants could be lost if not used in the 23-24 school year.

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

Michelle Davis, Board Executive Director said that Member Flores would not be attending the meeting. Executive Director Davis directed Board Members to materials in their packets, including the Emergency rule for On-site Sewage systems, the order or adoption extending the implementation date for the school rules. Executive Director Davis described the Board's Community Compensation Guidelines, the legislative background for stipends for individuals with lived experience and shared the staff's commitment to incorporating equity into their work. Executive Director Davis thanked Molly Dinardo, Board staff for leading the effort to develop the guidance. Executive Director Davis also announced that the Foundational Public Health Services (FPHS) Committee had approved the Board's 2023-2025 FPHS spending requests.

Kate Dean, Board Member, commented in support of the community compensation guidelines. Member Dean asked who might be eligible. Executive Director Davis said that the team would be prioritizing limited funds for committee members not receiving compensation. Executive Director Davis said the team would also explore utilizing these funds for Health Impact Review key informants. Molly Dinardo, Board staff said that under state law, the funds are allowed for both one-time and ongoing activities. Kelly Oshiro, Board Member emphasized the importance of compensating Technical Advisory Committee volunteers for Newborn Screening.

Executive Director Davis announced that the next regularly scheduled Board meeting would be held on October 9, at the Confluence Technology Center in Wenatchee. Executive Director Davis reminded Board Members about the Washington State Public Health Association Conference in Wenatchee. Executive Director Davis also indicated that the Board had recently received a number of comments that did not fall under the Board's authority, such comments related to mask mandates, the Department's vaccine advisory committee, and the Department's budget requests. Executive Director Davis said that for topics such as these, staff forward them onto the agency that has authority.

Patty Hayes, Board Member, expressed appreciation for the public comment process and making sure comments are funneled to the appropriate authority. Member Hayes noted that the Board doesn't have authority over the Departments budget, licenses, etc.

Stephen Kutz, Board Member, inquired about petitions such as the water recreation and audiology screening request on today's agenda. Executive Director Davis said under state law, the Board has 60 days to respond to petitions.

## **5. FISCAL YEAR 2023 HEALTH IMPACT REVIEW UPDATE**

Caitlin Lang-Perez, Board staff, Lindsay Herendeen, Board staff, Miranda Calmjoy, Board staff, provided a presentation on Health Impact Reviews (HIRs) with a history of HIRs and how they can be utilized. They also provided data on the subject matter of HIRs since their inception. The presentation included the feedback the HIR team received related to their work. Since 2014, the HIR team has completed 120 HIRs. To date, the team has finalized 2 HIRs and 3 are pending additional information.

Stephen Kutz, Board Member stated that it is unbelievable what has happened around HIRs and addressed how HIRs have impacted the policy-making process. Member Kutz asked if there is a place where the HIRs are cataloged. Member Kutz appreciates the power of these reports and notes that this is one of the only states where HIRs take place. Caitlin responded that a catalog is on the Board's website at [Health Impact Reviews | SBOH \(wa.gov\)](#). Caitlin explained that HIRs are available on the website, including the request form, executive summary and full report. Caitlin also explained that HIRs may be searched within the archive by category or key terms.

Kate Dean, Board Member asked if the HIRs are included with the bill materials on the legislative website.

Michelle Davis, Board Executive Director, stated the team has had conversations with key legislative staff in the past, but because this information is generated outside the legislature, it is not included in the legislature's materials.

Member Dean talked about her involvement in county legislative work and asked how the HIRs can be disseminated more easily to inform negotiations in real time? Member Dean shared that information can be weaponized and appreciates the non-partisan structure of HIRs. Member Dean shared support for protecting the efficacy of HIRs.

Tao Kwan-Gett, Chief Science Officer, Secretary's Designee, thanked the HIR team for their work and emphasized the importance of lawmakers having access to non-partisan scientific information. The HIR team noted the value of anecdotes from both sides of the aisle reflecting on the usefulness of HIRs. The team indicated such anecdotes are helpful to include HIR outreach.

Patty Hayes, Board Member added her thanks particularly for the one-on-one time with the HIR staff. Member Hayes commented on the effectiveness of the equity approach. Member Hayes would like to create a more active approach to informing folks about the effectiveness of HIRs. Member Hayes said this serves as a national model, particularly the non-partisan outside agency aspect. Member Hayes offered to assist in a speaking tour to inform other agencies and organizations about the HIR. Member Hayes asked the Board to prioritize outreach.

Member Kutz expressed appreciation for HIR team efforts.

Keith Grellner, Board Chair, concurred and recognized the effectiveness of the reviews.

## **6. THURSTON COUNTY PUBLIC HEALTH UPDATE**

Dimyana Abdelmalek, Board Member, Health Officer, Thurston County provided a presentation on the Thurston County Public Health and Social Services department (PHSS), including information on the county's mission and values. Dr. Abdelmalek described Thurston County as the sixth most populated county in Washington and explained that Thurston County has a population of 303,400 with a population density of 419 people per square mile in metropolitan and rural areas. Median household income is over 80K and 9.9% live in poverty. The county mirrors the state population, but we do have a larger over 65 population. Racial and ethnic makeup also mirrors the state.

Dr. Abdelmalek said Thurston County is a public health and social services department, and its work includes everything from community health to vital services. Dr. Abdelmalek said because Thurston County provides social services, there are significant areas in housing and homelessness prevention.

Dr. Abdelmalek discussed the challenges of the county and said while the county continues to support COVID mitigation services, the department is now able to refocus staff back onto the other areas. Dr. Abdelmalek talked about the value of increased relationship building with community members and organizations as a result of the pandemic, which enabled the department to work with people and organizations from diverse backgrounds with different perspectives. Dr. Abdelmalek discussed the lessons learned from the pandemic, including training and operations structures, to strengthen external and internal programming and relationships.

Dr. Abdelmalek said Thurston County Public Health is in the process of redesigning the department's structure, noting a refocus on Foundational Public Health Services (FPHS). The department has examined the services they provide and is working to increase access, much of this work is informed by the community members and the population-based data.

Dr. Abdelmalek commented on the department's efforts to strengthen the internal programming and integrating new opportunities into their structure. Dr. Abdelmalek said the department is increasing its focus on communicable diseases and described a listeria outbreak that involved a Thurston County resident.

Dr. Abdelmalek discussed maternal and child health programs and environmental health projects and said the department is taking a holistic approach to the health of those with a substance use disorder and focusing on other issues such as immunizations, housing and houselessness and emergency preparation.

Dr. Abdelmalek focused on next steps and continued support for those who live, work, and play in Thurston County, which includes identifying areas of improvement for communities, such as outreach through social media campaigns and a website redesign. They are also using data informed community focused approaches to tackle public health challenges.

Patty Hayes, Board Member expressed appreciation for the presentation and said local health should be more prevalent at Board meetings. Member Hayes asked how local public health is working with the implementation of new rules.

Dr. Abdelmalek said their teams have appreciated the ability to weigh in on the rulemaking process, the communication and outreach by the Board with other local health jurisdictions (LHJ) related to communicable diseases, and the opportunity to engage and share the local perspective and what implementation looks like on the ground.

Keith Grellner, Board Chair, thanked Dr. Abdelmalek for the work they are doing at Thurston County. Chair Grellner noted the work that Thurston County has done with the legislature and thanked Dr. Abdelmalek and their department on behalf of other LHJs.

Tao Kwan-Gett, Chief Science Officer, Secretary's Designee, thanked Dr. Abdelmalek for all their work and engagement with the Department of Health. Member Kwan-Gett asked how the social services aspect impacts their work.

Dr. Abdelmalek responded that the inclusion of social services helps inform the public health work and increases staff expertise as well as community engagement.

Member Kutz asked about the .09% additional optional sales tax. Dr. Abdelmalek explained that funds are split between different services.

Socia Love-Thurman, Board Member, asked about child and maternal health and injury prevention. Dr. Abdelmalek said this program is in its early stages and it spans across organizations. Thurston County is working with communities to see what the specific burden of injuries is and is working on information sharing, data gathering, and analysis pieces.

The Board took a break at 11:27 a.m. and reconvened at 11:37 a.m.

## 7. OVERVIEW OF LEAD PREVENTION PROGRAMS

Keith Grellner, Board Chair, brought the meeting back to order, and welcomed Molly Dinardo, Board staff, who introduced Anneke Jansen from the Department of Health (Department), and Kathy Ross from the Tacoma-Pierce County Health Department (TPCHD) to present on childhood lead poisoning prevention programs.

Anneke Jansen, Department of Health provided an overview of the Department's Childhood Lead Poisoning Prevention Program (CLPPP), including data related to childhood lead screening and blood lead levels in Washington State and information on the Department's prevention work. Anneke also provided an overview of the Department's work with partners. See the presentation on file.

Kathy Ross, Tacoma Pierce County Health Department (TPCHD), provided an overview of TPCHD's lead poisoning prevention program, which conducts case management, promotes blood lead testing, conducts community education and engagement, and builds infrastructure. Kathy stated that TPCHD is in a leadership response role for local health jurisdictions' lead poisoning prevention work. Kathy shared that TPCHD is developing a model program (e.g., toolkits, trainings, shared services) that can be used by other local health jurisdictions to work on lead poisoning prevention. See the presentation on file.

Kelly Oshiro, Board Vice Chair, stated that lead poisoning disproportionately impacts families that live below the poverty line. Vice Chair Oshiro emphasized that racism is a public health crisis and would like to see information about testing presented by income and race/ethnicity. Vice Chair Oshiro also expressed appreciation for the Department's work with immigrant and refugee communities and noted that there are several areas of opportunity for legislative action, including mandatory screening for daycares, and collection of data by race/ethnicity. Vice Chair Oshiro inquired about the data overlay of testing in Pierce County that Kathy presented, and asked of the children being tested, how many are on Medicaid compared to those who are not. Vice Chair Oshiro commented on the opportunity to work with the Health Care Authority (HCA) and that these types of data will be necessary to support future asks.

Kathy stated that one of the challenges is that insurance information is not always collected in blood lead screening results. Anneke stated that the Department is currently working with the HCA on data sharing and matching agreements.

Patty Hayes, Board Member, commented on the length of time it takes for data-sharing agreements to be put into place between state agencies and that the process should be more seamless. Member Hayes said that access to Medicaid data is also challenging for local health jurisdictions and emphasized the need for public health entities to maintain existing agreements and move forward with more transparency related to future data sharing. Member Hayes mentioned that data sharing agreements for Medicaid data with HCA should remain on the Board's list of priorities and that over the years and shared the Washington Chapter of the American Academy of Pediatrics, has been a key partner in ongoing conversations. Member Hayes also expressed that this is

an example of the move to the medical home that happened in Washington a long time ago, which resulted in a separation of public health and the practice environment. Lead poisoning prevention programs are a good example of this because public health is still trying to figure out its role in this work. Member Hayes commented that if testing doesn't occur in the provider office (e.g., for reimbursement, time, or lab-related reasons), public health needs to understand the barriers to testing and emphasized that Pierce County's work creates an opportunity to learn about some of these barriers. Member Hayes emphasized the need for public health and pediatricians to work together and noted that the issue is rooted in broader systemic challenges. Member Hayes described work by the Washington Department of Children, Youth, and Families (DCYF) in the early learning setting. Member Hayes said this work was done with funding from the Legislature, and established Help Me Grow with WithinReach. The program brings all the partners together and could be a good resource for the Department and Pierce County to connect with. In response to Vice Chair Oshiro's earlier comment, Member Hayes expressed that even if the Legislature took steps to require mandatory screening for daycares or other entities licensed for childcare, not all children would be included, especially immigrant and refugee children who are more likely to depend on childcare from family, friends, or neighbors. Member Hayes reminded everyone that the Board does not have authority in this area but does have an interest in maternal and child health and would like to talk more about partnering and supporting this work.

Steve Kutz, Board Member, commented that reports on elevated blood lead levels should provide a good understanding of where the lead sources are. For example, lead in soil around old homes, especially near the former Asarco Smelter site in Tacoma. Member Kutz reflected on his time in the military and recalled the soil of every home being tested for lead. Member Kutz also commented on former orchards as a source of lead and said that as former orchard sites are converted to land for homes, effort to prevent lead poisoning impacts children beyond those from low-income families. Member Kutz stated that testing in childcare facilities cannot be the only solution because of the challenges of accessing childcare, as childcare centers are closing across the state. Member Kutz emphasized that the work should be done in physicians' offices. Member Kutz noted an additional challenge is that the Washington Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) program is still conducting many of its visits remotely, further limiting lead testing; it may be challenging for parents to remember if their child was tested, let alone what their levels are.

Kathy stated that TPCHD is still running the Dirt Alert! program that tests for lead and arsenic in soil for homes located in the former Asarco Smelter plume area.

Member Kutz added that the housing infrastructure in Tacoma and a lot of other inner cities have been covered multiple times with lead paint, and it could be in the soil around the area. Member Kutz inquired if maybe there could be a program where there is subsidized lead testing of soil around homes, or maybe a requirement for low-income housing that someone needs to come in and test the soil to ensure it isn't contaminated.

Michelle Davis, Executive Director, thanked the presenters and said that it was great to hear about the impact of Foundational Public Health Services (FPHS) funding on the program. Executive Director Davis noted that whenever the Board hears about shared service opportunities to address these types of issues, it demonstrates the profound



impact that funding from the Legislature can have not only in the immediate community but across the state. Executive Director Davis emphasized that the state public health system has not paid enough attention to lead poisoning prevention efforts and that the work has been unfunded for many decades or relied on federal funding sources that went away. Executive Director Davis recalled past comments from people in the provider community that lead is not an issue in Washington State because our housing stock is not as old as it is on the East Coast, so awareness and education among the provider community is a challenge and might explain some of the low testing rates. Executive Director Davis stated that more work is needed with pediatricians across the state and presents a good opportunity for public health. Executive Director Davis requested the lead poisoning prevention program to come back and share updates at a future Board meeting.

Anneke shared their program's contact information and invited additional conversation, feedback, and ideas from Board Members.

Member Hayes asked that the Department keep the Board actively updated about the State Health Plan Amendment and the data-sharing agreement with HCA.

Member Kutz asked if there is lead uptake in vegetables planted in contaminated soil.

Kathy stated that there can be lead uptake.

Dimyana Abdelmalek, Board Member asked about the Centers for Disease Control and Prevention (CDC) lowered action level of 3.5 micrograms per deciliter (ug/dL) and expressed interest in learning more about the potential impact of lowering the action level from 5 to 3.5 in Washington State.

Anneke stated that the caseload would about double. In places like King County, that doubling could be significant for program and staffing resources.

The Board took a lunch break at 12:37p.m. and reconvened at 1:26 p.m.

## **8. EMERGENCY RULEMAKING – ON-SITE SEWAGE SYSTEMS, WAC 246-272A-0110, PROPRIETARY TREATMENT PRODUCTS AND SUPPLY CHAIN SHORTAGES**

Tao Sheng Kwan-Gett, Chief Science Officer, Secretary's Designee reminded the Board of the need and purpose of the emergency rule to allow the use of comparable replacement parts to maintain proprietary on-site sewage treatment products during supply chain shortages and other manufacturing disruptions and requested a fifth emergency rule in this sequence.

Jeremy Simmons, Department of Health provided an overview of the issue and background on the emergency rule request. Jeremy updated the Board on replacement component approvals to date and the status of permanent rulemaking on the chapter, and said staff plans to brief the Board on the permanent rulemaking in October, and public hearing tentatively scheduled for January 2024. See materials on file.

**Motion:** The Board directs staff to file a fifth CR-103E, Emergency Rulemaking Order, upon expiration of the fourth emergency rule, filed as WSR 23-13-018, to amend WAC 246-272A-0110 to help ensure on-site sewage system proprietary treatment products continue to function properly without negatively impacting treatment, operation, or maintenance during supply chain shortages or other manufacturing disruptions.

**Motion/Second:** Member Kwan-Gett/Member Dean. Approved unanimously.

## 9. RULES UPDATE – [SANITARY CONTROL OF SHELLFISH](#), CHAPTER 246-282 WAC

Patty Hayes, Board Member provided background on Board authority for shellfish sanitation and said the presentation was intended to update Board Members on the Sanitary Control of Shellfish rulemaking in preparation for future discussions. Stuart Glasoe, Board staff gave additional background, noting that the project includes permanent rulemaking on the chapter and emergency rulemaking delegated to the Department on the *Vibrio parahaemolyticus* (Vp) Control Plan.

Dani Toepelt, Department of Health (Department) presented on the purpose and scope of the rulemaking, including meetings with Tribes and the rule advisory committee; emphasis on Vp issues and control measures; emergency rule filing in May 2023 for the Vp Control Plan; independent work on shellfish fee rulemaking being conducted by the Department under separate authority; and next steps for the shellfish sanitation rulemaking. See materials on file.

Steve Kutz, Board Member asked about other possible concerns in the marine waters with increasing heat events, and if sustained high temperatures could impact toxins and algal growth and cause other illnesses.

Dani stated that Washington State has not seen an illness related to more dangerous *Vibrio vulnificus* (Vv) but said it has been detected in oysters on recreational beaches and California just had their first case. Dani mentioned ongoing monitoring for marine biotoxins (paralytic, diarrhetic, and amnesic shellfish poison) and said the rule revision will modify the program from Vp to *Vibrio* generally. The Department has already seen domoic acid in razor clams this year, which is unusual.

Kate Dean, Board Member stated that a shellfish grower shared that they decided not to harvest this summer because they do not have the equipment for cooling, and asked whether the Department considers economic impacts to growers and communities when considering rule changes.

Dani and Stuart outlined the rule analyses requirements, which include a cost benefit analysis as part of the Significant Analysis and a Small Business Economic Impact Statement. Both emphasize cost impacts on businesses. They noted that the fee rulemaking is not subject to the same cost impact analyses.

Member Dean asked if delegated rulemaking would come back to the Board. Stuart said that the fee rulemaking is the Department's authority and will remain with the Department. Stuart explained the working relationship between Board and Department

staff on the permanent rulemaking, and that the delegated emergency rulemaking authority applies only under certain conditions prior to completion of the permanent rulemaking. The Board retains authority for the chapter. The delegated emergency rulemaking allows for quick action by the Department.

Tao Kwan-Gett, Chief Science Officer, Secretary's Designee, asked if there is a relationship between seed size and vibrio. He also asked if these rules impact norovirus or if that is at the restaurant. Dani said the Department sees norovirus in shell stock in rainy months when pollution sources drain to waterways. Dani said trace-back programs help with monitoring and illness investigations. Dani said 2-to-3-inch oysters are made for oyster bars. You can cook out vibrio (not biotoxin) in larger oysters. Oysters are typically consumed raw. Other shellfish are not typically consumed raw.

Keith Grellner, Board Chair said that warming water matters for public health—the warmer the shellfish are, the harder it is to cool them down. Chair Grellner shared personal experience indicating surface waters in the Hood Canal are noticeably warmer and added that the rule changes help keep the industry open and working.

#### **10. PETITION FOR RULEMAKING FOR [WAC 246-260-031](#), GENERAL DESIGN, CONSTRUCTION AND EQUIPMENT FOR ALL WATER RECREATION POOL FACILITIES**

Keith Grellner, Board Chair, briefly introduced the petition for rulemaking regarding water recreation pool facilities and reminded Board Members of the ongoing water recreation rulemaking.

Andrew Kamali, Board staff, provided more details on the petition request related to barrier and latch height at limited and general-use pools to comply with the American with Disabilities Act (ADA). Specifically, the petitioner requested that the Board change the barrier requirements at limited and general-use pools to comply with ADA door height rules and stated in the petition that a latch above 60 inches is not reachable from a seated position, which is a safety issue. In addition, the petitioner stated that barriers should have a continuously locking latch or coated latch at ordinary height, to give equal access to individuals who utilize wheelchairs, while still maintaining child safety and preventing unauthorized entry into pool areas. Andrew shared that the petitioner also mentioned that the current rule language for general-use pools is confusing, because they can technically follow state rules, even if they don't comply with federal ADA door handle requirements.

Andrew gave an update on the ongoing technical advisory committee (TAC) meetings for reviewing and revising the water recreation rules. Andrew noted that at an upcoming meeting, the TAC will be addressing the design and construction of water recreation pool facilities, and that the goal of the committee is to provide inclusive recommendations that are compliant with federal ADA rules and use an equity lens. Andrew mentioned that the petition has been shared with the Department of Health's Water Recreation team and the local health jurisdiction where the pool facility is located to notify them of the ADA complaint and the next steps.

Andrew also shared a document that provided an overview and comparison of existing pool access barrier and latch height rules for the Washington State Administrative Code (WAC), the Model Aquatic Health Code (MAC), the Americans with Disabilities Act (ADA), and State Building Code (see document on file). Andrew highlighted the differences between each rule related to latch height and noted the use of the word “or” in the WAC, which doesn’t require compliance with the ADA guidelines.

Steve Kutz, Board Member, noted that there are competing safety issues with the rules related to children’s access to facilities and the ADA. Member Kutz asked what the minimum requirements are to protect children.

Andrew responded that if a child is 5-7 years old, typically, they can reach a 60-inch latch, but the way around this is by having a locking mechanism that is placed at a height that is accessible. Andrew stated that the WAC was originally written to prevent drowning accidents and other events but didn’t take into consideration how it may impact individuals who can’t reach certain heights.

Member Kutz then asked if the issue raised by the petitioner was being discussed in the current rule review process and TAC meetings.

Andrew confirmed that the topic would be discussed at the TAC meeting scheduled for the first week of October.

Member Kutz commented that the workaround could be to require facilities to have alternative methodologies to access facilities, such as key cards.

Andrew responded that the TAC will be doing more research into the topic related to latch heights and accessible entryways, as another concern is that the current rule doesn’t require accessible entryways. Andrew noted that the TAC would then bring recommended rule language for the Boards review after that.

Lilia Lopez, Assistant Attorney General (AAG), added in response to Member Kutz’s question that the ADA does recognize that there may be safety needs that can take precedence over other requirements and that there needs to be more of a review to see how the WAC, MAC, and ADA guidelines can work together to consider safety, access, and inclusivity.

Member Kutz asked if the Board takes action, if it would require every pool in the state to come into compliance with the emergency rule.

Andrew clarified that they are not considering emergency rulemaking for this request, however, in re-writing the rules and presenting them to the Board to consider as the process continues, the rules don’t typically work retroactively, so it would only be relevant for when facilities are updated, or new facilities are built.

Patty Hayes, Board Member, summarized that the petitioner is asking for a specific alignment between the different rules, which the TAC is already going to consider, and inquired if there is an advantage for the Board to act and send the petition to the TAC for consideration.

Andrew confirmed that it would be helpful for the Board to send this petition to the TAC, and ask the committee to complete additional analyses to see how the Board's rules can come into compliance with federal recommendations.

AAG Lopez added in response to Andrew's earlier comment that the current rule has a compliance regulation within it that would direct existing facilities to comply with rule requirements, meaning they would have to bring their facility requirements up to date, if readily achievable, regardless of remodeling or building a new facility.

Chair Grellner commented that the bottom line is that this will take some work, but the ADA and the water recreation rules can work together, we just have to figure out how to make it work.

Andrew concurred and said the purpose of the TAC is to look at all of the other codes and provide draft language with the Board that allows access for all Washingtonians.

**Motion:** The Board accepts the petition for rulemaking to amend WAC 246-260-031 to be considered as part of the ongoing rulemaking for water recreation facilities and directs staff to notify the requestor of its decision. The Board further requests that the Department direct the TAC to prioritize this section of the rules and brief the Board of the TAC's findings by January 2024.

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

Kelly Oshiro, Board Vice Chair, added that in Board efforts to be transparent with the petitioner, staff should explain the ongoing work being done to the petitioner related to the TAC. Vice Chair Oshiro also noted that in reviewing the petition again, the Board is addressing pools in this work. Vice Chair Oshiro inquired whether the TAC plans to address the other concerns noted by the petitioner during the earlier public comment in the meeting related to shower and toilet facilities and whether it was within the Board's authority.

Andrew responded that it would be as a water recreation facility encompasses not only pools, but also dressing rooms, bathrooms, and shower facilities.

Chair Grellner thanked the petitioner for bringing this forward.

The Board took a break at 2:15 p.m. and reconvened at 2:30 p.m.

## 11. PETITION FOR RULEMAKING [CHAPTER 246-760 WAC](#), AUDITORY SCREENING STANDARDS IN SCHOOLS

Kelly Oshiro, Board Vice Chair, summarized the Board's petition for rulemaking process, and the statutory requirements the Board must follow when a petition is received. Vice Chair Oshiro stated that on July 26, the Board received a petition for rulemaking request from the Lake Chelan Lion's Club to amend the Board's school

auditory screening standards under Chapter 246-760 WAC to include otoacoustic emission (OAE) screening technology and noted that petition materials are available in the meeting packet. Vice Chair Oshiro reminded Board Members of the public comment received during the public comment portion of the meeting from two individuals from the Lion's Club (one from the Lake Chelan Lion's Club and the other from the Chair of the Northwest Lion's Foundation) on the petition request. Vice Chair Oshiro concluded by introducing Board staff to provide more information on the petition, background on the current auditory screening requirements in the Board's rules, and a high-level overview of national childhood hearing screening guidelines.

Molly Dinardo, Board staff, presented an overview of information relevant to the rulemaking petition, including the ways in which otoacoustic emission (OAE) screening and the pure tone screening tests are different, and an overview of childhood hearing screening recommendations and guidelines from the American Academy of Audiology (AAA) and the American Speech-Language-Hearing Association (ASHA). See the presentation on file.

Vice Chair Oshiro asked if there was a representative from the Office of the Superintendent for Public Instruction (OSPI) online, and Annie Hetzel, School Health Consultant for OSPI, responded yes.

Vice Chair Oshiro asked if Annie could share more information about the role of OSPI, and per the requirement noted in the Board's statute under RCW 28A.210.020, what their recommendation would be on this request.

Annie Hetzel, School Health Consultant, Office of Superintendent of Public Instruction (OSPI), stated that OSPI is charged with supporting education in the K-12 setting, which includes pre-K through the grade 12 setting. Annie serves as a school health services consultant and supports school nurses and health services. Annie shared that OSPI does not have a recommendation on whether to open the rule at this juncture. Annie emphasized that if the rule were to be opened, OSPI would consider factors such as the ease of implementation of any rule change, as well as cost considerations for school districts, and a special focus on maintaining evidence-based practices and centering potential outcomes and benefits for children.

Tao Kwan-Gett, Chief Science Officer, Secretary's Designee, commented on his admiration for organizations such as the Lake Chelan Lions Club, and their involvement in the health of children in the community. Member Kwan-Gett stated that as a pediatrician, not an audiology expert, the recommendation is to rely on guidelines from the Academy of Audiology. Member Kwan-Gett noted the potential of OAE screening to be more time efficient, but in reviewing the AAA guidelines emphasized that it recommends OAE technology for young school-aged children (preschool) or children for whom tonal screening is not appropriate, making it difficult to support a change in practice, unless there was a compelling reason, perhaps a study of the effectiveness of the new screening tool. Member Kwan-Gett also shared that OAE screening technology is typically used by providers to screen infants. For school-aged children, providers typically use pure tonal screening. Member Kwan-Gett said he was reluctant to include OAE for the broader school-aged population, based on his experience with hearing screenings and guidance from the AAA.

Keith Grellner, Board Chair, asked Molly if we know why there is a target age group for OAE, whether it's related to physiological changes, and why the test is limited to early age groups.

Molly did not know the specific mechanisms but stated that OAE technology is generally easier to use because it is more automated. Molly also mentioned that Bill Lundin, one of the petitioners, shared that there are 7 states currently using OAE technology as part of school hearing screening standards, and could send the list of states to Board Members.

Socia Love-Thurman, Board Member, noted that both AAA and ASHA guidelines recommend pure tone screening as the gold standard or ideal first screening test, and inquired if the Board pursued rulemaking if they could explore OAE as an option for students who cannot participate in pure tone screening, but not as a required screening for all school aged children.

Molly responded that if the Board accepts the petition, this could be something staff evaluates through consultation with interested parties and subject matter experts.

Chair Grellner pointed out that in the petition language, it looks like that is what the Lion's Club is proposing, to add the OAE as an option.

Molly clarified that the request is to make OAE screening a primary screening option for school-aged children.

Bill Lundin, Chair of the Northwest Lion's Foundation, stated that they want to be able to screen all children with the OAE technology and, if a child receives a fail result, use tonal screening. Bill L. shared that the Lion's Foundation would like to use OAE as a primary test because of the volume of children they screen, and currently, with the 500 children they screen in a school, they have about a 14% referral rate using pure tone screening, which they are afraid is high.

Steve Kutz, Board Member, stated that hearing is so integral in a child's development and ability to learn that the state must ensure children receive the gold standard screening test at least once. Member Kutz stated concern that if both screening tests are mixed together in hearing screening procedures in schools, who will keep track of which students had what test and who will track the outcomes to make sure they've had the tonal test. Member Kutz read from the guidelines that, ideally, children are to have pure tone screening completed by the time they are five years old, which Member Kutz noted is generally before children enter school. Member Kutz stated that if children haven't had pure tone testing prior to entering school, school hearing screenings are another opportunity for them to get this test.

Molly confirmed that the Board's rules cover students in kindergarten, and there are some early programs that are within school districts, which cover younger populations of students. The Early Childhood Education and Assistance Program (ECEAP) is required to do hearing screenings for children in the program.

Vice Chair Oshiro, inquired about the seven other states that are using OAE screening technology in their schools, and, as a follow-up, would want to know how these states have integrated this technology into their screening standards (e.g., is it a required or optional screening). Vice Chair Oshiro also expressed concerns about whether adding this screening technology would or would not increase equity, specifically, whether the technology would be available for all schools throughout the state or just Chelan County, where the petitioner is located.

Member Kwan-Gett, in response to Chair Grellner's earlier question, clarified with OAE screening, you just get a pass or fail result, whereas, with pure tone screening, it gives you information about at which frequency range a child may have hearing loss, as well as the degree of hearing loss. Member Kwan-Gett also expressed interest in learning more about how other states are using OAE technology and whether this technology has proved to be as sensitive and specific as pure tone screening.

Chair Grellner stated that with the public commenters, the Board heard two things: that the current rule is an issue because it does not permit the use of OAE technology, and there was another issue around factors that fall outside of the purview of the rule, such as a deadline to use grant or other funding to purchase new screening equipment. Chair Grellner mentioned that based on consultation with the Board's counsel, this petition request wouldn't qualify for emergency rulemaking, and the Board may be in a position where they need to gather more information before making a decision.

Member Kutz agreed that this petition request doesn't rise to the level of emergency rulemaking and that the Board needs to hear from subject matter experts on this topic. Member Kutz noted that if the Board decides to proceed to rulemaking, Board Members will get some of the information they are requesting, but given the length of rulemaking projects, it wouldn't be in the timeframe the petitioner is likely hoping for.

Dimyana Abdelmalek, Board Member, stated support for the Board receiving more information. Member Abdelmalek also expressed interest in learning more about the different types of hearing screening technology available today and identifying more recent studies that have tested the use and effectiveness of OAE screening technology across age groups.

Patty Hayes, Board Member, agreed that more information is needed and that this is not an emergency rule. Member Hayes inquired if the best course of action would be to deny the petition and ask staff to gather questions and provide a preliminary report back without opening the rule up. Member Hayes said it would seem the Board could deny the petition and ask for some data, and then come back and decide at another time whether to proceed with rulemaking, but acknowledged this could be duplicative work.

Molly indicated that gathering more information could be an option. Board staff could narrow the scope and bring experts together to give input.

Michelle Davis, Executive Director, outlined several options the Board could take, noting that if the Board were to direct staff to conduct a review and file a CR-101 to initiate rulemaking, it would put the Board one step closer to a proposal and possibly shorten the timeline. Executive Director Davis emphasized that the advantage of rulemaking is



that it's a broad announcement letting interested parties know that the Board is examining the rules and clarified that opening rulemaking isn't necessarily accepting the changes in the petitioner's proposal.

**Motion:** The Board accepts the petition for rulemaking to explore the options to revise relevant sections of chapter 246-760 to permit the use of otoacoustic emission (OAE) screening technology in Washington State school auditory screening standards and procedures under RCW 28A.210.020. The Board directs staff to notify the requestor of its decision and to file a CR-101, Preproposal of Inquiry, to evaluate the request and possible rule change further.

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

Executive Director Davis asked for clarification on the motion and whether it is to permit the technology or explore whether the technology should be included.

Member Kutz clarified that the motion is to explore options.

Member Hayes agreed with the motion and exploring the options. Member Hayes asked Molly to survey Board Members on their questions as staff move forward with this process.

Vice Chair Oshiro asked Molly if the Board was responding to this request appropriately, specifically if the petition came in as an emergency rulemaking request or just a regular petition for rulemaking request.

Molly confirmed that the petition was a regular rulemaking request, and the Board was responding appropriately.

Chair Grellner extended appreciation to the Lions Club for all their work across the state and noted that accepting the petition for rulemaking and gathering more information is a good path forward.

## 12. RULEMAKING PROCESS OVERVIEW

Molly Dinardo, Board staff, stated the goal of the presentation is to give Board Members an overview of the Board's rulemaking process.

Steve Kutz, Board Member, commented that Board Members should have this type of presentation every time a new Member joins the Board.

Michelle Davis, Executive Director, shared that staff are in the process of updating the Board orientation manual to include this rulemaking process overview presentation.

Molly Dinardo, Board staff, presented information on the rulemaking process. See the presentation on file.

Executive Director Davis added that in addition to connecting with interested parties, industry partners, and subject matter experts, the Board also completes a Dear Tribal Leader letter at the CR-101 rulemaking phase, so that Tribes are informed about the state's activities that they may or may not have an interest in. Board staff reach out again at the CR-102 in the event they wish to engage in Tribal consultation. Executive Director Davis emphasized that Tribes are not interested parties, they are Sovereign Nations, and the Board has an obligation to alert them to the Board's work.

Member Kutz stated that what Executive Director Davis is referring to is official engagement with Tribal Governments.

Socia Love-Thurman, Board Member inquired if engagement also involves Urban Indian Health Programs and other Tribal Organizations, or just Tribes.

Member Kutz noted that it's just Tribes.

Executive Director Davis clarified that even though the Dear Tribal Leader Letter doesn't go to Urban Indian Health Centers or clinics, the Board does seek opportunities to engage with them along the process.

Member Kutz added that a lot of issues affect Urban Indian populations, and when they know about it and how it affects them, they start engaging in this work.

Executive Director Davis acknowledged there is more work that the Board needs to do around engagement with Urban Indian Health Programs and other Tribal Organizations.

Member Love-Thurman reminded the group that 76% of American Indian and Alaskan Native people live in urban areas and that the Board should not forget this in their rulemaking work.

Member Kutz commented that the Board almost always works on rules that are already in existence rather than creating a new rule from scratch, and inquired if the Board has ever created new rules.

Keith Grellner, Board Chair, responded that there have been several new rules the Board has created over the years, including the local board of health expansion, and vaping rules.

Member Kutz mentioned that the reason for bringing this question up is that some of these rules have been in place for a long time and evolve over time.

Kate Dean, Board Member, asked for additional information about Technical Advisory Committees and why some rules include these committees, while others do not. Member Dean also inquired if there is an appeal process for rulemaking.

Executive Director Davis responded to the question regarding Technical Advisory Committees and stated that the Board has the authority to stand up ad hoc committees to support its work, although committees aren't used for all rulemaking projects. There are several areas where the Board consistently convenes these committees, which

include the Board's newborn screening and immunization rules. Executive Director Davis shared that the Board has also elected to use advisory committees for the recent notifiable conditions' rulemaking. Executive Director Davis concluded that staff do not always default to using technical advisory committees in the rulemaking process, and it typically depends on how broad the scope of the updates are and other factors.

Member Kutz commented that other than emergency rulemaking, the Board has never rushed through anything.

Lilia Lopez, Assistant Attorney General (AAG), responded to Member Dean's other question, noting that it is possible for rules to be appealed under the Administrative Procedures Act, and this process is usually done in superior court. AAG Lopez also provided specific reasons for which a court can find a rule invalid and added that the Joint Administrative Rules Review Committee (JARRC) can also review rules if they receive a complaint.

Executive Director Davis further explained the role of JARRC and provided examples of their role in reviewing agency rulemaking.

Member Kutz asked if staff wanted to address another item not mentioned in the presentation, which is funding associated with rulemaking implementation.

Executive Director Davis provided an example using the Board's newborn screening rules. Executive Director Davis reminded Board Members that whenever the Board approves a newborn screening technical advisory committee recommendation to add a new condition to the state panel and directs staff to proceed with rulemaking, there needs to be sufficient funding in both the Department of Health and Health Care Authority's budgets to cover costs associated with adding new tests.

Member Kutz added that opening rules could mean new requirements being added to the rule, and because of this, the Board has held off on opening some rules in the past.

Executive Director Davis responded that if the Board directs staff to take on rulemaking, staff need to notify the public about what the scope is and be clear in communications. Executive Director Davis also reiterated that staff are available to the Board for any questions about rulemaking.

Member Dean added that it is helpful to see the Board's rules all in one single document, and that this should also be included in orientation materials.

### **13. BOARD MEMBER COMMENTS AND UPDATES**

Tao Kwan-Gett, Chief Science Officer, Secretary's Designee, shared some Department of Health (Department) and remarked that August is a busy meeting month, with one health conference in Ellensburg. Member Kwan-Gett said the Department held other meetings across the state to talk about human/animal health from a one-health survey. Member Kwan-Gett said that the Department and University of Washington (UW) are hosting a Washington Health Data Innovation Summit on August 17 and 18.

Member Kwan-Gett talked about COVID-19 trends, and noted increases in COVID activity, primary care visits, and slight rises in hospitalizations. Member Kwan-Gett reminded Board Members that there are still more than a dozen deaths due to COVID-19 each week and there are reports of a new COVID-19 booster this fall.

Kate Dean, Board Member, talked about informing the legislature regarding School Environmental Health & Safety Rules. Member Dean said it might not be a year for action, but a year of educating and groundwork. Keith Grellner, Board Chair, commented we may not be ready for anything definitive, but would be great to move forward with the rules. Michelle Davis, Executive Director said staff has received inquiries regarding Environmental Justice (EJ) implications, and have shared rule history, the Board's recommendations in the State Health Report, and the need for school funding for remediation as well as funding for the suspended rule, and assessment of school infrastructure and other needs.

Member Dean commented on the number of legislators leaving their positions, resources marked for EJ, and opportunities to make progress.

Chair Grellner said the next meeting is on Monday, October 9. Chair Grellner said that the Department has called a meeting that day with Local Health Jurisdiction Administrators, Health Officers, and Tribal Health Leaders. Chair Grellner said the Board needs to make sure we have a quorum for our Board meeting. Steve Kutz, Board Member, asked about the Department meeting.

Member Kwan-Gett said the meeting is a requirement by statute to convene the local health officers (LHOs) annually and that a save-the-date was sent to LHOs, and Tribal Officers. Executive Director Davis said the problem is we need a quorum of 6 out of our current 9 Board Members, and if Members participate in the Department's meeting, we won't have a quorum. Executive Director Davis said our goal for co-locating with Washington State Public Health Association (WSPHA) conference is so that folks can attend all the meetings. Member Kutz asked about the ability to move the Board meeting.

Patty Hayes, Board Member, said the Board publishes their meetings a year in advance. Member Hayes doesn't feel the Board should have to reschedule and said there might be an option to put action items in an earlier, consolidated time, so those that attend the Department meeting can leave.

Socia Love-Thurman, Board Member said that October 9 is Indigenous People's Day. Executive Director Davis apologized for not realizing that when scheduling. Member Dean said she needs to attend the October 9 meeting virtually. Member Hayes prefers trying to shift our schedule, perhaps make a shorter meeting with action items early on October 9, that there may be a way to make it happen.

Member Hayes estimated the number of Board Members that could attend; Member Hayes, Vice Chair Oshiro, Chair Grellner, Member Kutz, Member Dean, Member Flores and a Department designee such as Kelly Cooper, then we'd have 7 Board Members.

Member Dean asked for action items to be moved to a certain portion of the day to get done, saying no particular time was necessary.

Member Kwan-Gett apologized for the schedule conflict.

## **ADJOURNMENT**

Keith Grellner, Board Chair, adjourned the meeting at 4:18 p.m.

## **WASHINGTON STATE BOARD OF HEALTH**

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Keith Grellner, Chair

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