

**STATE BOARD OF HEALTH
MINUTES**

**April 6, 2007
9:00 a.m.**

**Business & Industry
788 Fairview Drive
Hearing Room
Carson City, Nevada**

**Business & Industry
2501 E. Sahara Avenue
2nd Floor, Bradley Building
Las Vegas, Nevada**

BOARD MEMBERS PRESENT:

Dee Hicks, RN (attended in Las Vegas)
Jade Miller, DDS, Chairman (attended in Carson City)
Roger Works, DVM (attended in Carson City)
Vishvinder Sharma, MD (attended in Las Vegas)
William E. Quinn, IV, Vice Chairman (attended in Las Vegas)

BOARD MEMBERS NOT PRESENT:

Frances Sponer (excused)
Joey Villaflor, MD

HEALTH DIVISION STAFF PRESENT:

Alex Haartz, Secretary, State Board of Health, Administrator, Nevada State Health Division
Bradford Lee, MD, State Health Officer
Ed Sweeten, Radiation Physicist, Bureau of Health Protection Services
Emily Fisher, Administrative Assistant III, Bureau of Licensure and Certification
Janet Osalvo, Executive Assistant, Nevada State Health Division
Joe Pollock, Environmental Health Specialist III, Bureau of Health Protection Services
Karen Brumhall, Grants and Projects Analyst I, Nevada State Health Division
Lisa Jones, Acting Chief, Bureau of Licensure and Certification
Stanley R. Marshall, Chief, Bureau of Health Protection Services

ADDITIONAL TESTIMONY PRESENTED BY:

Mr. Gary Thurm, Jr., PE, Manager, Three Castles Engineering, LLC
Linda Anderson, Senior Deputy Attorney General, Office of the Attorney General
Mary A. Anderson, Washoe County District Health
Mr. Pete Quenzer

OTHERS PRESENT:

Ms. Carla Quenzer
Katie Fellows, Jones Vargas
Tom R. Clements, Southern Nevada Adult Mental Health Services
Victoria Schmaded, Southern Nevada Adult Mental Health Services

Jade Miller, DDS, Chairman, opened the meeting at 9:10 a.m. Dr. Miller indicated that the meeting was properly posted at the locations listed on the agenda in accordance with the Nevada Open Meeting Law.

1. Roll Call and approval of minutes from the December 8, 2006 Board of Health meeting.

Janet Osalvo, Executive Assistant, Nevada State Health Division, stated that Ms. Sponer was excused. A quorum was established.

There being no changes, additions or deletions to the December 8, 2006 Board of Health minutes.

MOTION: Dr. Works moved to approve the minutes of December 8, 2006 Board of Health meeting.

SECOND: Ms. Hicks

PASSED: UNANIMOUSLY

2. CONSENT AGENDA

Mr. Haartz indicated that Board members were provided copies of two (2) letters prior to the meeting and that a change needs to be made to the Agenda, item numbers 2A and 3. Mr. Haartz stated that a letter had been received from Boulder City Hospital by the Health Division requesting item number 2A to be withdrawn from the Agenda, Case #596. The letter states that a new CEO has been hired and this filled position now meets the requirements pursuant to NAC 449.313(3). Additionally, a letter was received from the law firm, Lionel Sawyer & Collins, pertaining to item number Three (3), Case #593 for AMN Healthcare, Inc., O'Grady-Peyton International, Inc. and RN Demand, Inc., requesting to be withdrawn from the agenda.

Dr. Miller stated that Agenda item numbers 2A and 3 are to be withdrawn from the agenda.

4. Case #598, Mr. Pete Quenzer: Request for Variance to NAC 444.767, "Residential system." "Residential system" means an individual sewage disposal system that serves a single-family dwelling."

Stan Marshall, Chief, Bureau of Health Protection Services (BHPS), indicated that Joe Pollock, Staff Engineer, was present to assist with answering questions. Mr. Marshall requested the Board to deny the variance request for Case #598 that was received from Mr. Quenzer. Mr. Marshall stated that this variance request pertains to allowing Mr. Quenzer to connect a second single family dwelling to an existing residential individual sewage disposal system (i.s.d.s.) located in Genoa, Nevada. Mr. Quenzer purchased the 1.92 acre property at 170 5th Street in Genoa, Nevada, in 1999. The property consists of a 3-bedroom single family residence that was constructed in 1976 and included an accessory structure that was constructed in 1978. Both structures were served by one (1) 1,200 gallon i.s.d.s.; however, there is no documentation available to show that the accessory structure was approved by either the Health Division or the Douglas County Building Department to connect to the existing residential system. Mr. Quenzer currently resides in the 3-bedroom single family residence. The accessory structure was destroyed by fire in September of 2006. At that time, the accessory structure was utilized as a residential rental unit. If this variance is approved, Mr. Quenzer would rebuild the residential rental unit and connect to the existing 1,200 gallon i.s.d.s. that serves the 3-bedroom single family residence.

Mr. Marshall then stated that approval of this variance would cause detriment to the public safety or impair substantially the purpose of the regulation. The increased waste flow from an additional single family dwelling would degrade the primary treatment of sewage in the septic tank. Consequently, the effluent would have higher concentrations of suspended solids and nutrients (phosphates and nitrogen) resulting in degradation of groundwater and premature failure of the absorption field. In addition, granting the variance in this particular case could be detrimental to public health by creating a "grandfather clause" that would allow continued noncompliant operation of this residential system as well as others with undocumented connection to multiple single family dwellings.

Mr. Quinn requested clarification of the size of the proposed structure that Mr. Quenzer was requesting to build and whether the original structure was previously approved to be added to the existing septic system. Mr. Quinn then asked if the septic system was ever overloaded while servicing the two (2) residential dwellings.

Mr. Quenzer indicated that the proposed dwelling is the same as the previous structure. The previous structure was an unattached tenant occupied living area consisting of 769 square feet that included a bathroom, kitchen and laundry room. In the seven (7) years the accessory structure existed, the septic system had not needed to be pumped.

Mr. Quinn stated that, he believed, the Board had approved variances in the past to allow a relative who required assistance from a family member to share a septic system for a finite amount of time, and an expiration date was established for those variances and not carte blanche for two (2) dwellings.

Gary Thurm, Manager, Three Castles Engineering, LLC, stated that both residences contained a total of 41 fixtures.

Mr. Quenzer stated that he has the seller's disclosure from the purchase of the property indicating that the structure was built according to code. If the fire had not destroyed the accessory structure, this issue would not be known. A tenant had occupied the accessory structure and paid rent. Mr. Quenzer indicated that the fire has caused a hardship pending approval to rebuild for he has a considerable loss of rental income.

Dr. Works asked whether a determination of the proper size of the septic system is based on the number of bedrooms in the two (2) residences.

Joe Pollock, Environmental Health Specialist III, BHPS, indicated that the size requirement of the septic system per dwelling is based on the number of bedrooms. Adding a one (1) bedroom residential dwelling to an existing three (3) bedroom structure would require a 1200 gallon i.s.d.s. Having two (2) residential dwellings using one (1) i.s.d.s. would increase the flows into the septic tank.

Mr. Thurm stated that by limiting the flow into the septic system, the system would not be overloaded. Mr. Thurm then stated that the total number of bedrooms in both residences is within the NAC requirement for the size of the septic system.

Mr. Quinn stated that it appears the septic system would be overloaded.

MOTION: Mr. Quinn moved to deny the variance request to NAC 444.767 for Pete Quenzer, Case #598

SECOND: Ms. Hicks

COMMENT: Mr. Quenzer stated that Douglas County had previously given him permission to build an 800 sq. ft. residential structure to replace the 769 sq. ft. accessory structure that was burned. Mr. Quenzer then indicated that he plans to build a 769 sq. ft. residential structure which is the same as was previously built.

Dr. Miller stated that according to the documentation that was provided in Board packets, Mr. Quenzer had offered to modify his existing septic system by adding a nitrate removal system to the septic tank. Dr. Miller then asked if public health risk would still be a factor in the event that the septic system was modified as Mr. Quenzer had proposed.

Mr. Pollock clarified for Dr. Miller that there would be a public health risk and that the denitrifying system would be gauged on flows relevant to the size of the 1,200 gallon septic tank. Mr. Pollock stated that the septic system treatment would be as effective as a denitrifying nitrate system and there was still the option to add a second septic system which would require the lot size to consist of two (2) acres. Mr. Pollock indicated that by evaluating past experience concerning the area in which the lot is situated, it is not a high-density area. Mr. Pollock then stated that there would be no control over the number of occupants that would occupy the two (2) residential structures and the effect on the septic system would be unknown.

Mr. Haartz asked Mr. Quinn if he is amending his motion to reflect support of granting a variance according to the lot size for the installation of a second septic system on the lot without having to apply for a separate variance.

Mr. Quinn stated that he did not want to use unnecessary time discussing this issue.

Mr. Haartz asked if Linda Anderson from the Attorney General's office is present.

Linda Anderson clarified for Mr. Haartz that she was present.

Mr. Haartz then asked Ms Anderson to provide guidance to the Board with regard to whether a variance would need to be filed or if the Board could make a motion to address it.

Ms. Anderson clarified that a motion could be made by the Board to include a condition as part of the variance in this case.

Dr. Miller asked Mr. Quenzer if he would favor a motion for the denial of this variance and that he could request a variance to install a second septic system.

Mr. Quenzer indicated that he would accept a motion to permit a second variance but preferred this variance be granted.

Dr. Miller stated that he favored Mr. Quinn's initial motion to include granting a variance for a second septic system. Dr. Miller then asked Mr. Quinn if he was in favor of amending his motion to apply this option.

Mr. Quinn stated that he was in favor of amending the motion and that this would be a good compromise for both the applicant and the State.

Dr. Miller asked if there were comments from Board members regarding that amendment.

Mr. Pollock, stated that a variance is being requested to NAC 444.790(1), which states, that a minimum area of one (1) acre including public streets and alleys or other public rights-of-way, lands or any portion thereof abutting on, running through or within a building site, is required for the installation of an individual sewage disposal system on a lot served by a well. Mr. Pollock then suggested that a condition is included for the applicant to submit septic system plans and the plans would be approved by the health department.

AMENDED MOTION: Dr. Miller stated that a motion had been made for denial of the variance request to add a second dwelling to the existing septic system and then to grant a variance for the installation of a second septic system with a condition that the plans for that second septic system be reviewed and approved by the appropriate authorities.

COMMENT: Dr. Miller then asked if there was any further public comment.

Mr. Thurm indicated that a letter had been sent to Mr. Haartz and Mr. Pollock on April 5, 2007 and requested if it had been received by the Health Division.

Mr. Haartz indicated that the letter had been received.

Mr. Thurm then asked if Board members in Las Vegas had received a copy of the letter.

Mr. Haartz and Mr. Quinn clarified for Mr. Thurm that Board members had received a copy of the letter in Las Vegas.

Mr. Thurm requested the opinion of BHPS staff on the idea of redirecting the path of waste water from the septic system at a different elevation and what effect there would be if the waste water is draining downhill in a different location.

Mr. Pollock stated that the reason a second septic system is preferred is this would ensure the primary treatment that occurs within the septic tank is allowed to provide the highest quality ethylene. The treatment of the absorption field that is documented in most reference materials indicates that the majority of the treatment occurs within the first 12 inches of soil penetration; whether or not a lower grade ethylene level would be provided through the initial system and reach the ground water, the waste needs to be sufficiently treated. Changing the location on the property would have no effect whatsoever. The installation of a second treatment system would ensure proper treatment of waste before it reaches the ground water.

Dr. Miller stated that a motion has been called and then asked if the motion had been seconded.

Ms. Hicks indicated that the motion was seconded.

Dr. Miller then indicated that a motion had been made and seconded.

PASSED: UNANIMOUSLY

Dr. Miller stated that the variance request has been denied to allow for a second septic system pending the review and approval of the plans by the appropriate authority.

5. Case #600, Las Vegas Metropolitan Police Department Forensic Laboratory request for a variance to NAC 459.658(1), "Equipment requirements," (1) "A safety device which prevents the entry of any portion of a person's body into the primary X-ray beam path or which causes the beam to shut off upon entry into its path must be provided on all open-beam configurations. A registrant or licensee may apply to the Division for an exemption from the requirements of a safety device."

Stan Marshall, Chief, Bureau of Health Protection Services, requested that the Board approve the variance request from Las Vegas Metropolitan Police Department Forensic Laboratory represented by Torrey D. Johnson, Forensic Laboratory Manager.

Mr. Marshall stated that this variance would allow the Las Vegas Metropolitan Police Department Forensic Laboratory to use a portable, hand-held Energy Dispersive X-ray Spectrometer in the evaluation of forensic elemental analysis. Although the device has an open beam configuration and does not have the means to comply with NAC 459.658(1) provisions to prevent entry of any portion of a person's body into the primary X-ray beam path or which causes the beam to shut off upon entry into the X-ray beam path.

Mr. Marshall indicated that this request is unique to the applicant in that this is the first variance sought for this device in Nevada.

Mr. Marshall stated that approval of this variance with the following recommended eight (8) provisions would not cause detriment to the public health or impair substantially the purpose of the regulation and is recommended:

1. All operators shall be factory-trained and certified to use the portable, hand-held X-ray spectrometer.
The registrant must maintain records of the training and the records will be made available for review by Health Division staff.
2. All operators shall wear an individually-issued dosimetric device on either the wrist or finger of the hand holding the X-ray device.
3. The portable, hand-held X-ray spectrometer must function with a dead-man trigger (exposure) switch.
4. The items to be analyzed shall not be held by the operator.
5. The operator shall be responsible to ensure that no body part of any persons shall enter in to the primary X-ray beam path open beam configuration.
6. The registrant shall authorize only certified, factory-trained individuals to operate the device. A current updated listing of the authorized users must be maintained at the machine use location and available upon request by the Bureau of Health Protection Services, Radiological Health Section.
7. The unit shall be used only by a certified trained operator and only the operator must have direct control of the device.
8. This variance is for one (1) portable hand-held device at this time. However, the variance may be expanded by a request to the State Board of Health by the Las Vegas Metropolitan Police Department for additional devices; and if a request may be submitted after review of personnel dosimeter records by Health Division staff to verify that use of this device by the operator is safe.

Dr. Miller asked if a time frame was requested for this variance and whether a variance request would be necessary in the future if additional devices are required.

Mr. Marshall clarified for Dr. Miller that a time frame was not requested by the Las Vegas Metropolitan Police Department and BHPS is not recommending one, and indicated that an additional variance request would be necessary if additional devices are needed.

Dr. Miller then asked if the hand-held X-ray device that was approved for the University Las Vegas School of Dental Medicine in June 2006 was different than this one.

Mr. Marshall clarified for Dr. Miller that this request is for non-medical purposes and is a different device than was approved for the University Las Vegas School of Dental Medicine.

There were no further questions or comments:

MOTION: Ms. Hicks moved to approve variance request for the Las Vegas Metropolitan Police Department Forensic Laboratory, Case #600, to NAC 459.658(1), including all eight (8) conditions as presented.

SECOND: Dr. Works

PASSED: UNANIMOUSLY

6. NAC 439.280(3), "Schedule for Compliance." "In those areas of the state which are not in a health district, or in case of a regulation enforced exclusively by the State Board of Health, the State Health Officer may postpone the enforcement of and agree to a schedule for compliance with the regulation. If the period needed by such a person to comply exceeds 45 days, the schedule must be submitted to the State Board of Health for approval." Request for approval of the Compliance Agreement between the Division of Mental Health and Developmental Services (MHDS), Southern Nevada Adult Mental Health Services (SNAMHS), the State Health Officer, and the State Health Division's Bureau of Licensure and Certification (BLC).

Lisa Jones, Acting Chief, Bureau of Licensure and Certification, stated that this compliance agreement request from Southern Nevada Adult Mental Health Services (SNAMHS). SNAMHS requested this Compliance Agreement for a nine (9) month period to allow use of the 1300 Building while bathrooms in Building 3A of the licensed hospital are being renovated to meet American Disability Act standards. This will allow the state psychiatric hospital to continue to provide mental health services that are greatly needed by the community.

Ms. Jones indicated that a Compliance Agreement for the 1300 Building of SNAMHS was previously approved by the Board. The initial Compliance Agreement was approved in August of 2004 to address a July 9, 2004 "Declaration of Emergency: Medical Crisis of Mental Health Patients Overcrowding Hospital Emergency Rooms" issued by Clark County. The compliance agreement provided for licensure of additional beds as a Residential Facility for Groups with Mental Health endorsement. Additional safety features were incorporated into the building at that time. In keeping with the initial compliance agreement, SNAMHS will admit patients to the 1300 Building only after they have received treatment in SNAMHS licensed psychiatric hospital and have been assessed as appropriate and safe for admission to this Residential Facility for Groups with Mental Health endorsement. The building has operated effectively, without incident to mental health patients, for approximately two (2) years.

The intent of the regulation is to assure that mentally ill patients receive essential care and services in a setting appropriate to their needs. This compliance agreement will assure the continued availability of beds and reduce the number of patients waiting in hospital emergency departments for extensive periods of time. The compliance agreement includes safeguards to public health and safety. SNAMHS anticipates construction to be completed within nine (9) months and has no other viable alternative to continue much needed psychiatric services. For these reasons, BLC staff recommends approval of this compliance agreement.

There were no questions or comments:

MOTION: Ms. Hicks moved to approve the request to extend the compliance agreement for SNAMHS including all conditions pursuant to NAC 439.280(3), as presented.

SECOND: Mr. Quinn

PASSED: UNANIMOUSLY

7. Reports

A. Chairman - Jade Miller, DDS

No report

Dr. Miller stated he would like to take the agenda slightly out of order and asked for agenda item number, 7C, Dr. Mary Anderson, to give her Washoe County District Health Department report.

C. Washoe County District Health Department – Mary Anderson, MD, District Health Officer

Dr. Anderson indicated that the Washoe County District Health Department (WCDHD) budget was presented to the Washoe County District Board of Health and County Commissioners. Dr. Anderson stated that other states are considering certain mandatory vaccinations, such as HPV and meningitis, for individuals of school age. The Los Angeles Times reports that a deadly parasite from Latin America which causes Chagas disease has become one of the latest threats to the blood and organ supplies in the United States (US). Washoe County has no known cases of Chagas disease at this time. Dr. Anderson stated that Washoe County District Health Department (WCDHD) is working to provide public awareness to the fact that HPV and meningitis illnesses are a factor and that immunizations are available.

Dr. Anderson indicated that there was a confirmed outbreak of botulism in one Washoe County family. Dr. Anderson stated that this is a rare, but often fatal, form of food poisoning. There are approximately ten (10) cases of this illness in the US per year and each case would constitute a public health emergency. This particular emergency occurred over the 2007 New Year's holiday weekend.

Dr. Anderson stated that Washoe County investigated four (4) outbreaks involving 70 cases of Norovirus. Dr Anderson then stated that there was a false-positive measles case in Washoe County that included a lot of resources for proper determination.

Dr. Anderson stated that the FDA has new standards in its Voluntary National Retail Food Regulatory Program for training staff. The FDA recommends that each inspector who performs inspections would provide 280 to 300 inspections annually by the year 2010. Washoe County inspectors were providing approximately 720 inspections per year but that number has decreased to 540. This is due to staffing changes. There are several new positions proposed in the WCDHD budget related to, Air Quality Management, Community and Clinical Health and Environmental Health Services.

Dr. Anderson stated that there is a new national public health logo. Use of the new public health logo will assist to identify the health authorities while they are providing public assistance during significant disasters.

B. Secretary – Alex Haartz, Administrator, Nevada State Health Division.

Alex Haartz, Secretary, State Board of Health, stated that the Governor's policy decision concerning whether fees would be included in the budget or to incur new fees for some Health Division Bureaus, the Bureau of Licensure and Certification (BLC), and the Bureau of Health Protection Services, Radiological Health section and Environmental Health section. The increased fees would support additional staff for regulatory purposes. There has been a budget shortfall projected for the next two (2) fiscal years ranging from \$50M to approximately \$140M

currently. The Health Division is in the process of addressing cuts to general fund supported activities.

Mr. Haartz stated that a letter was received from the State of Nevada Assembly transmitting a Concurrent Resolution to the State Board of Health for recognizing what their actions were to reduce teen tobacco and teen substance abuse. Additionally, there is a legal size sheet that identifies the legislation that the Department of Health and Human Services is tracking. If there are questions concerning this list after the meeting, please contact the Nevada State Health Division.

Mr. Haartz stated that there are many laws being proposed by the Legislature that will require the State Board of Health to adopt new regulations as a result of the Legislation. At the June and August 2007 Board of Health meetings, it is expected that more proposed regulation adoptions will be a result of Legislative actions from this session.

Mr. Haartz indicated that the office building the Health Division is now located within includes a hearing room that will be used for holding public meetings. Health Division staff is looking forward to the completion of this room.

C. Washoe County District Health Department – Mary Anderson, MD, District Health Officer

This item was taken out of order after item 7A on page-5.

D. Environmental Commission – Frances Sponer, Board of Health Designee

No report

E. State Health Officer – Bradford Lee, MD

Dr. Lee stated that most of the recent complaints concerning the Nevada Clean Indoor Act are in Clark County. Clark County is attempting to accommodate as many parties as possible within the realm of the law. The rural county complaints have been minimal and all that were investigated, the restaurant owners have been willing to comply. Dr. Lee indicated that he believes the complaints in Washoe County are very minimal as the county has worked with residents and business owners also.

Dr Lee then stated that next week there will be a regional pan flu meeting with the western region. The Tamiflu anti-viral is on hand in Nevada including 108,000 treatments and still pending receipt is 24,000 treatments of Relenta.

Dr. Lee then stated that fish advisories were released based on the Food and Drug Administration (FDA) mercury recommendation levels and on the fish assessments that are provided by Nevada Department of Wildlife.

8. Public Comment and Discussion

Dr Miller indicated that the next Board of Health meeting is scheduled to be held in Las Vegas on Friday, June 22, 2007, and in lieu of a much fuller agenda, Dr. Miller suggested that the Board meet face-to-face.

There being no further comments, Dr. Miller adjourned the meeting at 10:25 a.m.