

**STATE BOARD OF HEALTH
MINUTES**

**August 15, 2008
9:00 a.m.**

**Southern Nevada Health District
625 Shadow Lane
Conference Room #1
Las Vegas, Nevada**

**Nevada State Health Division
4150 Technology Way
Hearing Room, Suite #303
Carson City, Nevada**

BOARD MEMBERS PRESENT:

Edwin Homansky, MD (Las Vegas)
Frances Barron (Las Vegas)
Jade Miller, DDS, Chairman (Carson City)
Lubna Ahmad, MD (Las Vegas)
Roger Works, DVM (Carson City)

BOARD MEMBER NOT PRESENT:

Joan Anjum, RN

HEALTH DIVISION STAFF PRESENT:

Adrian Howe, Radiation Physicist, Bureau of Health Protection Services
Christine Roden, Health Resource Analyst III, Bureau of Health Planning & Statistics
Debbi Bryant, Administrative Assistant III, Bureau of Licensure and Certification
Gloria Deyhle, Nevada State Health Division
Janet Osalvo, Executive Assistant, Nevada State Health Division
Karen Brumhall, Grants & Project Analyst I, Nevada State Health Division
Linda Anderson, Chief Deputy Attorney General, Office of the Attorney General
Lynn O'Mara, Health Resource Analyst III, Bureau of Health Planning & Statistics
Mary Guinan, MD, PhD, Acting State Health Officer
Mary E. Wherry, RN, MS, Deputy Administrator, Nevada State Health Division
Richard Whitley, MS, Secretary, State Board of Health, Administrator, Nevada State Health Division

ADDITIONAL TESTIMONY PRESENTED BY:

Dr. Larry Frank, Senior Director of Legal Services, IMX Companies
Mary Anderson, MD, District Health Officer, Washoe County Health District

OTHERS PRESENT:

Peggy Willard Ross, Nevada Division of Insurance
Eden Lee, Nevada Division of Insurance
Nancy Gruenhagen, Nevada Care
Sally Dietrich, Nevada Care
Parker Brooks, Jones Vargas
Alistair Barron, Nevada APA
Larry Hurst, Anthem

Jade Miller, DDS, Chairman, opened the meeting at 9:15 am. 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 the minutes from the June 20, 2008 meeting.

Janet Osalvo, Executive Assistant, Nevada State Health Division, stated that Ms. Anjum was excused and a quorum was established.

The June 20, 2008 meeting minutes were presented after agenda item #2.

2. Request for examination pursuant to NRS 695C.310, "Examinations" and NAC 695C.310, "Health Maintenance organization: Review of examination of organization required; approved examiners; organization to cooperate during examination."

Lynn O'Mara, Health Resource Analyst III, Bureau of Health Planning & Statistics (BHP&S), stated that since Agenda item #2 was requested to be heard by the Board, NevadaCare had not been in compliance with the requirements, however since that time, new information has surfaced. Ms. O'Mara indicated that an amended recommendation would be presented to the Board.

Dr. Larry Frank, Senior Director of Legal Services, IMX Companies, stated that IMX Companies is a parent company of NevadaCare and is currently in the process of acquiring accreditation for NevadaCare. The contract was signed in October 2007. The accreditation process is progressing with the final documentation ready to submit in October 2008. Upon final documentation submission, a final inspection would be appropriate and is expected to take place in January or February 2009.

Dr. Frank stated that there had been a lack of communication with the Health Division and the Nevada State Department of Insurance by NevadaCare. Dr. Frank indicated that NevadaCare has corrected communication with the Health Division and would continue to provide updates concerning accreditation status.

Ms. Barron requested clarification from Dr. Frank for the reason NevadaCare had not been in compliance.

Dr. Frank was unable to provide a reasonable explanation for NevadaCare's noncompliance with State regulations.

Ms. O'Mara stated that the Health Division had made a recommendation to the Board for the Administrator of the Health Division to be allowed to submit a letter to the Commissioner of Insurance recommending that a joint examination by the Division of Insurance and the Health Division be completed of NevadaCare, Inc. Subsequent to NevadaCare's voluntary cooperation, the Health Division makes recommendation to amend that the Board would direct NevadaCare to provide regular progress reports to the Health Division and in the future if NevadaCare does not provide progress reports, the Health Division and Division of Insurance would seek directive to conduct a joint examination of NevadaCare.

Ms. O'Mara proposed recommendation that NevadaCare be required to submit regular progress reports at least every 60 days to the Health Division to ensure accreditation is advancing toward completion.

Ms. Barron requested clarification from Ms. O'Mara on the evidence that NevadaCare's quality of health care services and financial health may not be in compliance with NRS 695C and NAC 695C requirements as was stated in the Board memorandum.

Ms. O'Mara clarified for Ms. Barron that when looking at the quality indicators for NevadaCare it's a low number compared to other Health Maintenance Organizations' (HMO) performances and there could be several reasons for that. When accreditation is being sought by an organization, the accrediting body will go in and access the performance indicators and it's difficult to determine why their numbers are below normal. The financial health is within the Commissioner of Insurance purview however the Health Division does track the enrolling membership numbers and there has been a significant decrease over the years. There has been an increase in enrollment at the Summerlin facility so NevadaCare may be shifting to that plan.

Dr. Frank stated that NevadaCare enrollment numbers were based on administrative data and the number of claims. A hybrid audit was not completed. NevadaCare is currently addressing these issues.

Additionally, there has been a shift in the market where many individuals are leaving HMO plans and enrolling in Preferred Provider Organization (PPO) plans. The growth of the Summerlin facility is not directly related to the low numbers of enrollment with NevadaCare.

There were no further comments or questions:

MOTION: Ms. Barron moved to approve that progress reports would be submitted to the State Health Division with criteria stipulated by the State Health Division by NevadaCare every 60 days until accreditation status is achieved.

SECOND: Dr. Homansky

PASSED: UNANIMOUSLY

1. Approval of the minutes from the June 20, 2008 meeting.

No additions, deletions or changes were made to the June 20, 2008 minutes.

MOTION: Dr. Homansky moved to approve the June 20, 2008 Board of Health meeting minutes, as presented.

SECOND: Ms. Barron

PASSED: UNANIMOUSLY

3. Election of State Board of Health Chairman

Richard Whitley, MS, Secretary, State Board of Health, Administrator, Nevada State Health Division (Division), stated that in accordance with the Board By-Laws a new chair person is to be elected at the first meeting of odd-numbered State fiscal years by a majority vote of all Board members. The main duty of the chair person is to reside over the Board meetings.

Mr. Whitley stated that during Dr. Jade Miller's leadership role as chairman of the State Board of Health, the Board never received criticism. Dr. Miller displayed progressive interest in appropriate duties of the Board during the Hepatitis C and Ambulatory Surgery Centers' investigations. Additionally, Dr. Miller participated in the weekly teleconferences and offered his support for the Health Division and lent support during the Legislative Health Care meetings while the investigations were in process. Mr. Whitley thanked Dr. Miller for his leadership role on the Board and for his support of the Health Division during his tenure as chairman.

Mr. Whitley opened the floor requesting nominations from the Board for consideration of chairman.

Dr. Works nominated Dr. Miller as chairman.

Dr. Miller declined as the Board By-Laws state, "the chairman may serve no more than two consecutive terms (Article 6, 6.2.1)." Dr. Miller had served two consecutive terms.

Dr. Homansky thanked Dr. Miller for his service on the Board. Dr. Homansky then nominated Frances Barron to serve as chairman.

Ms. Barron consented to the nomination as chairman.

Dr. Ahmad seconded the nomination for Frances Barron.

Ms. Osalvo called roll and recorded the Board's vote.

**Vote: Dr. Ahmad voted for Ms. Barron
Ms. Barron voted for Ms. Barron
Dr. Homansky voted for Ms. Barron
Dr. Miller voted for Ms. Barron
Dr. Works voted for Ms. Barron**

By majority vote, Ms. Frances Barron was elected chairman of the State Board of Health.

Mr. Whitley stated that Dr. Miller would serve as chairman for this meeting and Ms. Barron would begin serving as Board chairman at the October 24, 2008 meeting.

Dr. Miller congratulated Ms. Barron on her election as the State Board of Health chairman. Dr. Miller thanked the Health Division staff for providing many services for the citizens of Nevada and Mr. Whitley for the leadership and counsel that he has provided for the Board members. Dr. Miller then thanked other Board members for their service on the Board representing the citizens of Nevada.

4. Informational Items

A. Current status and future direction for Nevada's J-1 Physician Visa Waiver program

Lynn O'Mara, Health Resource Analyst III, Bureau of Health Planning & Statistics (BHP&S) introduced Christine Roden, Health Resource Analyst III, BHP&S, Manager of the State's J-1 Visa Waiver program.

Ms. Roden stated that the J-1 Visa is a student visa. Physicians from other countries come to the United States (US) to complete their medical residency on a J-1 student visa, usually for three years for family practice and four years for Obstetrics and Gynecology (OB/GYN). The physician is required to return to their home country after the three to five year residency. However, once the physician completes his/her residency and decides to practice in an underserved area for three years, the Department of State will issue the physician a H1B waiver. The H1B waiver is a work visa.

Dr. Miller requested clarification of the process when a J-1 Visa Waiver program physician relocates to another area that is not designated an underserved area.

Ms. Roden clarified for Dr. Miller that a J-1 Visa Waiver program physician cannot practice in a non-underserved area of the State. The physician would be returned to his/her home country.

Lynn O'Mara, Health Resource Analyst III, Bureau of Health Planning & Statistics, stated that there have been numerous problems concerning un-indentured physicians since September 2007. The J-1 Visa Waiver program had been moved to the Bureau of Family Health Services within the Health Division in the mid-1990's for personnel reasons. However, the program has recently been transferred back to the Bureau of Health Planning & Statistics (BHP&S). The BHP&S staff is attempting to gather rationale for the J-1 Visa Waiver program problems. The Legislative Committee on Health Care has taken an interest in the J-1 Visa Waiver program and a Bill Draft Request (BDR) would be introduced for presentation at the 2009 Legislative Session.

Ms. O'Mara indicated BHP&S staff has completed researching past records for the J-1 Visa Waiver program and are dealing with the issues that had surfaced. It is anticipated that by January 2009, the issues would be addressed and mostly rectified. The Primary Care Advisory Council (PCAC) was established to oversee the J-1 Visa program. The PCAC is comprised of representatives from a variety of organizations and stakeholders in the private and public sector that would have an impact on the provision of primary care within Nevada, particularly in medically underserved areas. The PCAC mission is to examine, consider and make recommendations concerning the J-1 Physician Visa Waiver and Employer

Site applications, a complaint process, policies and procedures, primary care development activities, primary care provider recruitment and retention efforts and any other issues impacting primary care access, availability and utilization. Any recommendations from the PCAC would be advisory only and reported to the Administrator of the Health Division. The Administrator of the Health Division would then report the recommendations of the PCDC to the Director of the Department of Health and Human Services.

Ms. O'Mara stated that BHP&S staff is continuing to improve the J-1 Visa Waiver Program by replacing current guidelines with formal policies and procedures, incorporating best practices from Nevada Revised Statutes (NRS). BHP&S would consider use of Memorandums of Understanding (MOU) between J-1 Visa Waiver program physicians and employers and the requirement that all program self-reports would be accompanied by a notarized affidavit stating the information is accurate and truthful. The information would be presented to the PCAC for review and recommendations. Unscheduled site visits and/or audits employing specific uniform criteria for assessing compliance with the J-1 Visa Waiver program would be developed and implemented.

The following J-1 Visa Waiver program enhancements are in process:

- Partner with other Health Division agencies with a vested and shared interest in monitoring primary care providers
- Meet with the State Board of Medical Examiners to discuss employers who may be abusing the J-1 Visa Waiver program physicians and/or are not complying with the federal program rules and requirements
- Hold confidential meetings with all J-1 Visa Waiver physicians
- Survey all J-1 Visa Waiver physician employer sites
- Schedule the next PCAC meeting for August 2008

Ms. O'Mara indicated that variable barriers precede the J-1 Visa Waiver program, such as other competing State priorities, pending federal rules and lack of data. The BHP&S is addressing the J-1 Visa Waiver program problems and progress is being made.

Dr. Homansky requested clarification by Ms. O'Mara on whether the J-1 Visa Waiver program physicians are allowed to provide services in hospitals. If physicians are allowed to practice in hospitals it leaves a gap for likely patient abuse. The J-1 Visa Waiver program license should be limited to practicing in underserved areas, not at hospitals.

Ms. O'Mara clarified for Dr. Homansky that the J-1 Visa Waiver program physicians are required to serve at least 40 hours in underserved areas. Most hospitals are located in underserved areas of the State and Nevada is in need of physicians.

Dr. Homansky indicated that the Health Division is striving to correct the J-1 Visa Waiver program issues. There is still a problem with physicians not being limited to serving in a practice setting in the underserved areas of the State. The program was set up to be advantageous and generate income from private practice settings.

Ms. O'Mara indicated that any ideas Dr. Homansky had concerning the J-1 Visa Waiver program were welcome and asked Dr. Homansky for a meeting.

Dr. Homansky indicated that he was willing to meet with staff, as appropriate.

Mary Guinan, MD, PhD, Acting State Health Officer, stated that the J-1 Visa Waiver program could be an item for discussion with the Board of Medical Examiners (BME) concerning the physician licensing. The

licensing agreement that is provided for the physicians should have stipulations so that incidences are prevented. Dr. Guinan believes that physicians should be allowed to work more than 40 hours and earn additional income. The J-1 Visa Waiver program should be more transparent so that in occurrence of physician or patient abuse it would be discovered sooner.

Ms. O'Mara indicated that staff is presently working with the BME on the J-1 Visa Waiver program however the BME may not have the authority to assist with these issues.

5. Reports

A. Chairman - Jade Miller, DDS

Dr. Miller indicated that he was a current member of the Trust Fund for Public Health (TFPH). The funding for the TFPH was eliminated during the last Special Legislative Session. The TFPH utilized the interest only that was earned on that fund. Dr. Miller recommended individuals to read the article that was published in the Reno Gazette Journal on Tuesday, July 29, 2008 titled, "Shortsighted Policies Spell End for Trust Fund for Public Health."

B. Secretary – Richard Whitley, MS, Administrator, Nevada State Health Division

Mr. Whitley stated that the Health Division introduced a Bill Draft Request (BDR) related to the issues surrounding Hepatitis C and the Ambulatory Surgery Centers (ASC) at the July 25, 2008 Legislative Health Care Committee meeting. The Board will be informed of BDR status as the process proceeds. Mr. Whitley then provided an overview of the BDR recommendations concerning the Hepatitis C investigation.

Dr. Guinan indicated that a number of issues had surfaced during the Hepatitis C investigation which were caused as a result of systems breakdown. There has to be a system solution in place on how the State would make all health facilities safe in Nevada. It's important to understand that there is a health system in Nevada and recognition of the components is a must and all entities should be effectively working together during an investigation. The State has taken the opportunity to model a system of approach on how to solve this problem. These problems are not unique to Nevada, occurrences are happening nationwide.

Dr. Guinan stated that solutions to improve the system for Nevada begin with the infection control issue. Infection control is what the State is focusing on. A committee has been organized to evaluate and improve the current system entitled, Nevada Advisory Committee to Prevent Infections in Health Facilities (Committee). Members of this committee are health professionals and were selectively appointed. Member selected to serve on the committee are the following individuals:

- Alan Greenberg, MD, University of Nevada School of Medicine, Chief of Infectious Diseases, Las Vegas, Nevada
- Steven Parker, MD, Sierra Infectious Diseases, Reno, Nevada
- Mary Jo Foreman, RN, Infection Control Nurse, Sunrise Hospital, Las Vegas, Nevada
- Millie Ayers, RN, Infection Control Nurse, Renown Health, Reno, Nevada
- Lawrence Sands, DO, Chief Health Officer, Southern Nevada Health District, Las Vegas, Nevada
- Mary Anderson, MD, MPH, Chief Medical Officer, Director, Washoe County Health District, Reno, Nevada

- Marena Works, MS, RN, Director, Carson City Health and Human Services, Carson City, Nevada
- Lawrence Matheis, Executive Director, Nevada State Medical Association, Las Vegas and Reno, Nevada
- Maurizio Trevisan, MD, Executive Vice Chancellor, University of Nevada Health Sciences System, Las Vegas, Nevada
- Trish Smyer, DNSC, RN, CNE, Associate Dean for Academic Affairs, University of Nevada Las Vegas School of Nursing, Las Vegas, Nevada

Dr. Guinan indicated that education would be a large part of the solution. During the investigation of the 2008 Hepatitis C issue in Nevada, the State did not have authority to close a facility that was found to have improper infection control practices. The Mayor of Las Vegas, Oscar Goodman, researched and discovered that the facility had not renewed its business license and the facility was shut down since the license had lapsed. When the Bureau of Licensure and Certification (BLC) provided subsequent inspections of the facilities in Nevada, it was by means of an infection control focus survey. The BLC found that 45 percent of the facilities in Nevada had deficiencies with infection control by injection practices. The State also needs to improve its communication system for reporting unsafe practices with the medical boards so that all individuals have an understanding of the system so that public health is not at risk. The State will develop a list of the problems, address each problem and create appropriate solutions. The Committee will be asked to promulgate the standards for infection control that are absolutely critical for the medical facilities in Nevada.

Dr. Guinan stated that the State Board of Health approved the Ambulatory Surgery Center (ASC) regulations at the June 20, 2008 meeting. Those regulations are applicable to ASCs, not any other facility type.

Dr. Guinan then asked for the Board's support throughout this process. The Board would receive status updates throughout the process.

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

Dr. Anderson stated that a serious threat for the citizens of Nevada occurred when the principal fund was removed from the Trust Fund for Public Health (TFPH). The TFPH consisted of tobacco settlement agreement funds approximately \$38M. The interest earned on the funds was utilized for the following services in Nevada:

- Promotion of public health and programs for the prevention of disease or illness;
- Research on issues related to public health; or
- Provision of direct health care services to children and senior citizens.

Dr. Anderson stated that over the years \$5.7M in interest was granted to qualified applicants throughout the state and assisted with the aforementioned areas. Some agencies that were funded by the TFPH interest have no other resources and would no longer provide those services.

Dr. Anderson indicated that there are two main areas requiring additional funding in the State of Nevada. The issues are related to immunizations. Recently there was a major cutback in vaccine providers for the State. The Vaccine for Children (VFC) would be the only program providing vaccine for the State and it's creating issues with agencies and organizations that find ways to serve the underinsured and uninsured. The TFPH could award funds for direct health

care services for children and seniors therefore the interest earned from the \$4.4M remaining in the TFPH could be utilized to fund immunizations in Nevada while the State is in transition with the VFC program. Dr. Anderson asked for the support of Board members and guidance for ideas to address the immunization issue.

Dr. Anderson stated that the Washoe County Board of County Commissioners had asked all departments in Washoe County to identify the WOW accomplishments during 2007 and 2008. There were four areas that the Washoe County Health District (WCHD) identified as WOW items:

- Air Quality Management: Washoe County was officially designated as being in compliance with the National Ambient Air Quality Standards (NAAQS) for Carbon Monoxide (CO). This was the culmination of an eighteen year effort.
- Community and Clinical Health Services (CCHS): Three CCHS health education programs won Model Practice Awards from the National Association of County and City Health Officials (NACCHO), 1) Attract, 2) Positive Choices Positive Futures, 3) Our Business Our Health. Our Positive Choices Positive Futures program was also selected as a NACCHO peer technical assistance site to other local health departments.
- Environmental Health Services (EHS): Washoe County Environmental Health Services Division implemented measures to ensure compliance with the requirements of the Nevada Clean Indoor Air Act (NCIAA). Accomplishments were achieved through educational activities and inspection efforts.
- Epidemiology and Public Health Preparedness: Washoe County's Public Health Preparedness (PHP) conducted a Mass Dispensing Exercise in October 2007 to test the ability to dispense vaccine or medication to a large population within a 48-hour time frame. Seasonal influenza vaccine was used to conduct the test for it is in high demand and would ensure that a large number of individuals would attend the event and receive the vaccine and rate the county's rapid dispensing capabilities. More than 2,000 individuals received the vaccine in approximately three and one half (3.5) hours. The National Association of Counties (NACo) selected the event as a, Point of Dispensing (POD) exercise for a 2008 achievement award.

Dr. Anderson commended Dr. Lawrence Sands, DO, Chief Health Officer, Southern Nevada Health District, for his outstanding performance during the Hepatitis C investigation. Dr. Sands' recommendations reported in the June 20, 2008 Board minutes were outstanding.

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

Ms. Barron indicated that the State Environmental Commission (SEC) had not met since the last Board meeting.

7. Public Comment and Discussion

Dr. Miller stated that the next State Board of Health meeting is scheduled for Friday, October 24, 2008. With no further comments, Dr. Miller adjourned the meeting at 10:52 a.m.