

Tompkins County Board of Health

July 22, 2014

12:00 Noon

Rice Conference Room

Present: Will Burbank; Brooke Greenhouse; Edward Koppel, MD; James Macmillan, MD, President; Michael McLaughlin, Jr.; and Janet Morgan, PhD

Staff: Sylvia Allinger, Director of CSCN; Liz Cameron, Director of Environmental Health; Sigrid Connors, Director of Patient Services; Brenda Grinnell Crosby, Public Health Administrator; Frank Kruppa, Public Health Director; Jonathan Wood, County Attorney; and Shelley Comisi, Keyboard Specialist

Excused: William Klepack, MD, Medical Director

Guests: Jessica Bartholomew, BOH Applicant; Frank Cantone, BOH Applicant; Samantha Hillson, Healthy Neighborhoods Program Education Coordinator; Sue Merkel, BOH Applicant; Skip Parr, Sr. Public Health Sanitarian; and Ted Schiele, Planner/Evaluator, Health Promotion Program

Privilege of the Floor: No one was present for Privilege of the Floor.

Dr. Macmillan called the regular meeting of the Board of Health to order at 12:07 p.m.

Introduction of Board of Health Applicants: Mr. Kruppa welcomed the applicants for the at-large position and asked them to introduce themselves.

Sue Merkel teaches microbiology at Cornell University to undergraduate students. Her interest in serving on the Board is partly professional as she teaches a course in public health microbiology and looks to connect students with real life experiences. As a community member who has been active in a number of organizations, she would like to share her talents with the community and interact with different people.

Jess Bartholomew has a Masters in Community Health Education. She has always worked in healthcare and loved it. Her husband is a chiropractor. Working together in their chiropractic office, they practice an alternative form of medicine with a focus on natural health which is something she believes the community wants. Based on her personal interests, she would like to be a part of this organization.

Frank Cantone is the Biological Safety Officer in Environmental Health and Safety at Cornell. He is a research microbiologist by training with a Masters in Public Health. At Cornell,

he partners with Gannett Health Services to look after the public health and safety of the university community. A Tompkins County resident for 22 years, he has many community interests in addition to volunteering as an emergency medical technician with the Ithaca Fire Department. For professional and personal interests, he is pursuing this opportunity to become more involved in the community.

Mr. Kruppa thanked the applicants for coming to the meeting. The next step in the process is setting up interviews with the Nominating Committee comprised of Mr. Burbank, Dr. Macmillan and Dr. Morgan. Interview questions will be sent to both the Nominating Committee and candidates to make the process comfortable for everyone. Once a name is brought to the Board for approval, the Health and Human Services Committee (HHS) and the full Legislature will consider the appointment. The goal is to have a candidate seated by the September meeting.

For the benefit of the applicants, Board members and Tompkins County staff members introduced themselves and noted their areas of expertise.

Approval of June 24, 2014 Minutes: Mr. Greenhouse moved to approve the minutes of the June 24, 2014 meeting as written; seconded by Dr. Koppel; and carried unanimously.

Financial Summary: Referring to the June 2014 summary, Ms. Grinnell Crosby stated there is no change from prior months; the same programs continue to reflect red in revenues.

Administration Report: Mr. Kruppa reported:

- Dr. Meinhardt is relocating and has resigned her position on the Board. The next step will be to advertise the vacancy and begin the recruitment process for a physician.
- The Health Department's 2015 budget was presented to County Administrator Joe Mareane for inclusion in his budget presentation to the Legislature. The maintenance of effort budget has no over-target requests (OTRs). When the Legislature approves a budget in November, it will take effect January 1, 2015.
- Since Tompkins County Health Department (TCHD) no longer operates a Certified Home Health Agency (CHHA), staff cannot bill Medicaid for in-home nursing services provided by the Medicaid Obstetrical Maternal Services (MOMS) program. TCHD has entered into contract negotiations to partner with Visiting Nurse Service of Ithaca (VNS) for billing purposes. VNS has been wonderful in working through this situation quickly.
- Two press releases went out since the last meeting. With the first confirmed West Nile Virus case in Tompkins County this year, the public was advised to avoid mosquito exposure whenever possible. The second press release was related to a rabid bat found in Montgomery Park in Dryden. Three children were reported to have been in the area poking at the bat, but it was not certain there was an exposure. Staff went door to door in the neighborhood, put notices up, posted information on Listserv, and requested media coverage. Although unsuccessful in locating the children, Mr. Kruppa commended staff for their outreach efforts. He also recognized the media for getting the message out quickly.

Mr. Kruppa answered questions from Board members:

- As a matter of awareness, he attended the Ithaca Housing Authority's public hearing on rate increases. The housing rate is established in one of two ways: either 30% of income or by existing flat rates. Through the United States Department of Housing and Urban Development (HUD), housing authorities have been informed the flat rates need to be 80% of Fair Market Value to put those flat rates closer to actual housing costs in the community, but no one would pay more than 30% of their income. The flat rate has not been raised in 12 years; it is a correction by the federal government to try to reduce the cost of the program. There is some concern about the rapid increase which will be implemented over three years. This possibly relates to TCHD programs by taking money out of the income pool of people already seeking services; otherwise, there is not a direct impact.
- In putting together the budget, Mr. Kruppa explained he tries to manage the budget according to the directive from the County. For 2015, it was maintenance of effort instructions. If TCHD was losing positions, then he would put those positions into OTRs.

Medical Director's Report: Dr. Klepack was not present for the meeting.

Division for Community Health Report: Ms. Connors reported:

- Dr. Klepack could not attend today's meeting so the revised *Bloodborne Pathogen Post-Exposure Policy* will be on the August Agenda along with the revisions to the *Tuberculin Skin Testing Policy*.
- In January, staff received notice from New York State Department of Health (NYSDOH) that TCHD would no longer be able to bill Medicaid for maternal/child services. She appreciates the assistance provided by Mr. Kruppa and Ms. Grinnell Crosby in the discussions with VNS. The contract is a positive step to generate much needed revenue.
- New York State has offered a performance improvement project to all Women, Infants and Children (WIC) programs in the state. It is 10% of the operating budget for the fiscal year starting in October. She will be working with WIC Program Director Beth Huber on the application due August 15th.

Children with Special Care Needs Report: Ms. Allinger informed members that the Franziska Racker Centers hired a clinical psychologist this past year. A process has been developed whereby the psychologist will provide local, diagnostic evaluations of young children on the autism spectrum. Families will no longer have to travel to Rochester or Syracuse.

County Attorney's Report: Mr. Wood stated he had nothing to report.

Environmental Health Report: Ms. Cameron provided the following updates:

- Last week, hydrilla in Fall Creek was treated with the herbicide endothall. Results from that application are being monitored and will be reviewed by the Hydrilla Task Force. Due to area storms, water flow is high so the levels being detected are low compared to what is normally expected after treatment. The Cayuga Inlet will receive an application

of endothall next week. Both areas will receive follow-up treatments of the herbicide fluridone at the end of August. Endothall is the herbicide that kills vegetation through contact with vegetation and fluridone is a systemic herbicide that is absorbed through the roots.

- The Village of Dryden's public water supply is contained in a reservoir located inside a building that is essentially an open reservoir, not a traditional storage tank. The Village is on a compliance schedule to replace the reservoir, and is conducting weekly inspections and daily chlorine readings. During an inspection last week, the operator found frogs in the reservoir. He immediately shut off the water supply and contacted Environmental Health (EH) staff who coordinated with NYSDOH as to appropriate actions. The Village was able to isolate the water without impacting their water supply so a Boil Water Order was not issued. Daily chlorine readings have had a chlorine residual and the results from bacteriological testing downstream of the reservoir were clean. EH staff is working with the Village's engineers on short-term modifications. It will be a couple of years before the reservoir is replaced.

Resolution #14.18.15 – Bell-Gate Mobile Home Park, T-Enfield, Violation of Board of Health Orders dated April 22, 2014: Mr. Parr reported Bell-Gate Mobile Home Park was brought before the Board a few months ago. The owner/operator, Greg Carman, had stopped maintaining chlorine residuals and had not been sampling the water or submitting reports. Action was taken with the previous resolution adopted by the Board. For a month and a half, the owner's wife took over operations. A certified water operator was hired and chlorine residuals were present and being checked as required. The situation was moving in a positive direction. Then Mr. Parr received a phone call from the water operator saying his position was terminated by Mr. Carman. In early July, Mr. Parr canvassed the residents trying to locate Mr. Carman, but no one had a forwarding address for him. At this point, there is no established communication with him. Ms. Cameron added this resolution includes language stating the permit will not be renewed when it expires at the end of October if substantial compliance has not been achieved.

Dr. Morgan moved to accept the resolution as written; seconded by Mr. Greenhouse.

In response to Mr. McLaughlin's question regarding who had responsibility for the mobile home park, Mr. Parr said the owner's wife advised him she had turned that responsibility back to Mr. Carman.

Mr. Burbank wondered whether there is ongoing total coliform testing. Mr. Parr stated staff members visit the park on a monthly basis to check on the situation but do not sample every time. To date, there has not been a positive sample for total coliform.

In answer to Dr. Morgan's question about collecting the fine should the property be sold, Mr. Wood explained there would be a judgment with a lien on the property that would need to be cleared.

Dr. Macmillan asked whether tenants are aware they may have to seek a new place to live. Mr. Parr replied they have been informed about the possibility the permit may not be reissued. While he supports the resolution, Mr. Burbank expressed his concern that an unintended consequence will be people being displaced. Ms. Cameron noted there are laws and regulations governing notice to tenants in the event the park needed to be closed.

Mr. Greenhouse wondered about pulling the permit. Although the permit can be revoked, Ms. Cameron said it is a long, involved process. It seems a reasonable course of action to wait until the permit expires.

Once the permit expires, Dr. Koppel asked about the period of time before tenants would need to leave. Ms. Cameron explained there would be discussions with Mr. Wood. Staff would adhere to regulatory requirements and be compassionate toward the tenants.

Mr. Greenhouse suggested amending the resolution and sending copies to known residences. It is a public record that notifies tenants about the process. Ms. Cameron said tenants could be added to the list of people copied with the documentation. Noting the tenants are concerned, Mr. Parr offered to hand deliver copies of the Order to them.

Board members discussed the importance of clarifying the date when the next permit will not be renewed unless there is compliance. Dr. Macmillan offered an amendment to insert the date in the last paragraph of Resolution#14.18.15 to read:

“Further Resolved, on recommendation of the Tompkins County Board of Health, That the TCHD will deny future permit renewals (next due on October 31, 2014) for failure to substantially comply with these Orders.”

The vote on the resolution, as amended, carried unanimously.

Discussion: Adding *Electronic Nicotine Delivery Systems (ENDS)* to Tompkins County’s Local Law for Clean Indoor Air: Mr. Kruppa introduced the subject of electronic nicotine delivery systems (ENDS) which is the official designation for e-cigarettes and other electronic devices used to deliver nicotine. The TCHD has been talking internally about a County response to the proliferation of these devices that would ensure there is a clean, safe environment for people wanting to avoid secondhand vapor. Staff members have been looking at the County’s local law related to indoor air quality and burning tobacco indoors. Written in 2003, that law seems to be the most effective way for the County to make a statement about electronic nicotine delivery systems that would ensure people are protected. These electronic devices are not regulated. From an exposure standpoint for the nonuser, it is unknown what substances are coming out of them. There are chemicals in the aerosol that are considered carcinogens at certain levels. It is important to get in front of this issue and address the use of these devices indoors in businesses. There are cases where outdoor spaces would be included, but that is related to restaurants and bars with outdoor seating space.

Staff members have looked at the County local law. They added a definition for an electronic nicotine delivery system and included ENDS in the definition for smoking. It effectively says anywhere smoking is currently banned by the law; these electronic nicotine devices would also be prohibited.

One reason to present this proposed addition to the law for the Board’s review is enforcement. TCHD is the enforcement arm; however, the operators of business establishments are also an enforcement mechanism. This law clarifies that these devices need to be treated the same as tobacco products and are prohibited. These devices are being marketed as a cool alternative to tobacco products. The risk is the potential exposure to youth. It has been a long-standing goal for public health to protect youth by limiting exposure to tobacco products and potentially becoming hooked on cigarettes and tobacco.

A second reason relates to the public health risk due to the unknown substances contained in these devices and lack of regulation. There have been significant increases in poison center calls since these devices have become prolific with many of those calls related to children being exposed to them. It becomes an issue not having them regulated from a youth standpoint or by what is expressed into the environment. TCHD's focus is making sure there is a clean indoor environment for employees and visitors to those facilities.

Mr. Kruppa said the Board has three options regarding its recommendation to TCHD on the next step: (1) no action, (2) find a different approach, or (3) take proposed language to the local law to the Legislature for consideration.

Mr. Greenhouse moved the proposed resolution for discussion purposes; seconded by Dr. Macmillan.

Discussion among Board members:

Mr. Greenhouse recalls the wording of the County's local law was about secondhand exposure to employees. His concern is that the regulations should be focused on that same theme. He questioned how to reconcile this law with secondhand smoke exposure to employees in hookah bars. Ms. Cameron responded it is similar to the situation with tobacco shops. People can smoke in tobacco shops if that is the sole business. Mr. Kruppa noted the County local law references New York State law. He distributed a copy of sections of the State law (see Attachment). There is an exemption for retail tobacco businesses which is defined on the first page. On the second page, there is a list of places where smoking restrictions are inapplicable; retail tobacco businesses are listed third. A definition and exemption to the County's local law may have to be added so that it is not more restrictive than what is currently being required for tobacco. Mr. Schiele mentioned there are shops that sell electronic devices but do not sell tobacco products. To his knowledge, they are not registered tobacco retailers. Ms. Cameron remarked they are subject to the Adolescent Tobacco Use Prevention Act (ATUPA) which bans the sale of electronic cigarettes to minors.

Mr. McLaughlin pointed out the public has the perception these devices are a means to quit smoking. Mr. Kruppa explained they are not approved smoking cessation products. Not knowing what is being ingested or expressed from the devices is enough of a risk to be considered an indoor air contaminant that needs to be controlled. Since these devices are not approved by the Food and Drug Administration (FDA) as smoking cessation products, Mr. Schiele reported they are being marketed as an alternative to be used in places where smoking is prohibited.

Recognizing there are unknown substances exhaled from these devices, Mr. Greenhouse recommended some changes under Section 72-5 before voting on the resolution. He suggested switching the order of paragraphs "G" and "H" for a logical progression of the points. Also, he proposed the current paragraph "G" should read: "This Legislature further finds that individuals are subject to ETS **and/or the exhaled vapors of ENDS** at their places of employment..." Lastly, he suggested eliminating paragraph "I" because it is outside the scope of the rest of the document.

Dr. Koppel referred to the "Smoking" definition under Section 72-6. He believes "mimics" is a nebulous term so he wondered about language specifying vaporization or chemical emissions. Ms. Hillson said she would look at the Policy Center's language. After a lengthy

discussion, the Board agreed on the wording: “The burning of a lighted cigar, cigarette, pipe or any other matter or substance which contains tobacco; **or the use of ENDS.**”

Referring to Section 72-5, current paragraph “H,” Dr. Macmillan was concerned about the language following “is virtually indistinguishable...” The Board agreed to the following: “After inhaling, the user then blows out the heated vapors, producing a ‘cloud’ of undetermined substance that contains known carcinogens and chemicals that cause airway irritation. These irritants could cause potential harm to individuals at their places of employment.”

The vote to approve the resolution with the aforementioned modifications to Article II of Chapter 72 carried unanimously. The next steps include presentations to the Health and Human Services Committee and full Legislature for their consideration.

Adjournment: At 1:55 p.m. Dr. Macmillan adjourned the meeting.