

1
2
3
4
5
6
7

**STATE BOARD OF HEALTH
OKLAHOMA STATE DEPARTMENT OF HEALTH
1000 N.E. 10th Street, Room 1102
Oklahoma City, Oklahoma 73117**

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27

July 10, 2018

28
29
30
31
32
33
34

CALL TO ORDER, ROLL CALL, AND CONFIRMATION OF A QUORUM

35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

Timothy Starkey, Member of the Oklahoma State Board of Health, called the regular meeting of the Oklahoma State Board of Health to order on Tuesday, July 10 at 11:00 a.m. The final agenda was posted at 10:30 a.m. on the OSDH website on July 9, 2018, and at 10:00 a.m. at the building entrance on July 9, 2018.

Members in Attendance: Jenny Alexopoulos, D.O.; Terry R. Gerard II, D.O.; Charles W. Grim, D.D.S.; R. Murali Krishna, M.D.; Edward A. Legako, M.D.; Ronald D. Osterhout; Becky Payton; Chuck Skillings; Timothy E. Starkey, M.B.A.

Central Staff Present: Tom Bates, Interim Commissioner; Brian Downs, Commissioner's Office; Tina Johnson, Deputy Commissioner, Community & Family Health Services; Gunnar McFadden, Assistant Deputy Commissioner, Community & Family Health Services; Julie Ezell, General Counsel, Office of General Counsel; Buffy Heater, Interim Director, Office of State and Federal Policy; Tony Sellars, Director, Office of Communications; Kim Bailey, Chief Operating Officer; Nicole Nash, Office of the General Counsel; and Diane Hanley, Executive Assistant, Commissioner's Office.

Visitors in attendance:

See attached sign-in sheets

Welcome:

Mr. Starkey welcomed and recognized Bob Jamison, Senior Deputy Director/Senior Finance Consultant, Oklahoma City-County Health Department, Tom Gruber, Senior Deputy Attorney General, Office of Attorney General, Terri White, Commissioner, Dept. of Mental Health & Substance Abuse Services, and Chelsea Church, Executive Director, Board of Pharmacy, who were in attendance. He also welcomed two new board members Chuck Skillings and Becky Payton.

34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55

REVIEW, DISCUSSION AND APPROVAL OF MINUTES

Mr. Starkey directed attention toward approval of the Minutes for the May 8, 2018 regular meeting.

Dr. Osterhout moved Board approval of the May 8 regular meeting minutes as presented. Second Dr. Grim. Motion Failed.

AYE: Gerard, Legako, Osterhout, Starkey

ABSTAIN: Alexopoulos, Grim, Krishna, Payton, Skillings

CONSIDERATION, POSSIBLE ACTION AND VOTE ON CHANGES TO THE 2018 BOARD OF HEALTH MEETING DATES, LOCATION AND TIMES

Mr. Starkey proposed changes to the August 10th, 2018 regular meeting to be held at the Moore Norman Technology Center in Oklahoma City and begin at 8:30am.

Dr. Krishna moved Board approval of the changes as presented. Second Dr. Alexopoulos. Motion Carried.

AYE: Alexopoulos, Gerard, Grim, Krishna, Legako, Osterhout, Payton, Skillings, Starkey

CONSIDERATION, POSSIBLE ACTION AND VOTE ON ELECTION OF 2018-2019 BOARD OF HEALTH OFFICERS

Mr. Starkey explained that Interim Commissioner Bates was asked to survey board members interest and gather information. Proposed new officers:

a) President: Tim Starkey

b) Vice President: Dr. Edward Legako

1 c) Secretary-Treasurer: Becky Payton

2 **Dr. Grim moved Board approval of new officers as presented. Second Dr. Alexopulos. Motion Carried.**

3
4 **AYE: Alexopulos, Gerard, Grim, Krishna, Legako, Osterhout, Payton, Skillings, Starkey**

5
6 **CONSIDERATION, POSSIBLE ACTION AND VOTE ON PROPOSED EMERGENCY RULES**
7 **CREATING THE OKLAHOMA MEDICAL MARIJUANA AUTHORITY PROGRAM**

8 a) **Consideration, Possible Action and Vote to Open the Rulemaking Record**

9 **Mr. Osterhout moved Board approval to open the rulemaking record as presented.**

10 **Second Dr. Krishna. Motion Carried.**

11
12 **AYE: Alexopulos, Gerard, Grim, Krishna, Legako, Osterhout, Payton, Skillings, Starkey**

13
14 Julie Ezell, OSDH General Counsel, presented a summary of the proposed emergency rules to the board for
15 consideration of approval. State Question (SQ) 788 provides for a patient license for medical marijuana for both
16 minors and adults. A minor can obtain a license if there are two certified physicians that sign-off and agree on the
17 condition for the child. An adult requires one physician recommendation to obtain a license. The physician is
18 required to review the Prescription Monitoring Program (PMP) to screen patients for substance abuse, mental
19 illness, and whether or not the patient poses a risk of diversion of the medical marijuana. The physician is also
20 required to follow-up with the patient, at least annually, to make sure the recommendation for medical marijuana
21 remains medically appropriate. SQ 788 has a provision for a caregiver's license so if a patient is unable to
22 ambulate, or otherwise go to a dispensary, the caregiver can obtain the medical marijuana and administer it to the
23 patient.

24
25 Mrs. Ezell discussed regulations for all commercial establishments which include dispensaries, processors and
26 growers. Some requirements for commercial establishments include physical premises limitations, qualifications
27 and background checks for employees, advertising, transportation, and packaging restrictions. All commercial
28 establishments will be required to post a \$100,000 surety bond. In regard to the dispensaries, there is a specific
29 provision in the rules for a dispensary manager who will be responsible to ensure the integrity of the product and
30 how it will be dispensed. Growers are limited to growing the marijuana indoors to ensure environmental safety. SQ
31 788 provides for a transportation license that can be obtained along with a commercial establishment license. Mrs.
32 Ezell shared that the rules have provisions for laboratory testing of medical marijuana and not only will the THC
33 content be tested but laboratories will also be testing for pesticides, heavy metals, and other types of toxins. THC
34 levels have been determined in the rules as well.

35
36 Mrs. Ezell shared there are provisions in the rules that tie smokable medical marijuana to the Smoking in Public
37 Places and Indoor Workplaces Act stating a person can legally smoke it in the same places where tobacco can be
38 smoked. There will be a verification system that allows dispensaries to determine if the patient license is valid and
39 will also allow law enforcement partners to verify a valid license holder. Another provision of SQ 788 is for a
40 scientific research license. This concluded Mrs. Ezell's presentation.

41 *See Attachment A - Proposed Emergency Rules*

42 *See Attachment B – Presentation*

43
44 Mr. Starkey asked board members if they had questions.

45
46 **Question:** How long did this process take and who did you work with?

47 **Answer:** OSDH staff started working on this in April after the Board approved them to begin preparations in
48 case SQ 788 passed. Several workgroups were created internally and OSDH reached out to many
49 other state agency partners. Numerous meetings were held with medical associations, trade groups,
50 pro-788 groups and anti-788 groups to gain input. Staff conducted research on other states that have
51 medical marijuana programs and worked hard to take a very comprehensive approach and hear all
52 sides.

53
54 **Question:** How many public comments did you receive?

55 **Answer:** Over 1,000

1

2 **Question:** After public comments were received, were there any changes made that you hadn't considered?

3 **Answer:** Yes. More specific language was added for requiring commercial establishments to track inventory
4 and also for processing standards.

5

6 **Question:** Is there anything other states have done that you were able to build on for Oklahoma?

7 **Answer:** There was a lot such as the transportation standards, commercial establishment safety standards and
8 laboratory testing standards.

9

10 **Question:** Is there a list available of issues, received through public comment and other sources, that weren't able
11 to be addressed in these rules? Could OSDH turn the list over to someone who has the authority to
12 address those issues?

13 **Answer:** Yes. Staff has kept a comprehensive list of possible things the legislature might want to consider in
14 clarifying or expanding SQ 788.

15

16 **Question:** There were some medical associations that wanted to have a pharmacist onsite at the dispensaries and
17 that's not currently in the regulation that is proposed, correct?

18 **Answer:** Not under the law, but the rules do require a dispensary manager.

19

20 **Question:** Do you feel the Board regulating that a pharmacist would have to be onsite would be outside the
21 board's legal scope to regulate?

22 **Answer:** I do.

23 **Question:** Is that one of the items on the list that could go to the legislature?

24 **Answer:** Yes.

25

26 **Question:** As you looked at other states that had medical marijuana, were they reporting into their PMPs the use of
27 marijuana?

28 **Answer:** Some of them do and in Oklahoma we can't do that without a change in statute. The rules are written
29 so that doctors are required to check the PMP.

30

31 **Question:** Are there regulations with regards to the number of dispensaries?

32 **Answer:** This has been discussed and researched and the legal opinion is that limitation can only be
33 accomplished by statute, not by rule.

34

35 During discussion the following concerns were shared:

- 36 • Oklahoma has worked hard to reduce the perils of smoking in our state and taking action that could
37 increase smoking is bothersome and could impose a public health hazard on those who do not smoke.
- 38 • In regard to the dispensary manager, currently controlled substances and many prescriptions written by
39 doctors are dispensed by a pharmacist who works for the pharmacy. There is no distinguished difference
40 with medical marijuana, a controlled substance, and just wondering why a pharmacist would not be in the
41 interest of patient safety.
- 42 • The Board wants to implement the law and honor the will of the people but do it in a safe and effective
43 manner. Many of the medical marijuana products have a number of interactions with common
44 medications. Having a pharmacist, who is an expert on chemicals, medication and interactions, would be
45 to protect the health of Oklahomans. What training does a dispensary manager receive in pharmaceuticals,
46 brain chemistry and interactions? Has that been defined?
- 47 • There are some issues that need clarification and redefining of the language for hospital systems and
48 physicians prescribing marijuana in a hospital setting.
- 49 • There is documentation that speaks to an increase in crime surrounding dispensaries. There is a concern
50 for patient safety, increased security, locations and the number of dispensaries.

51

52 In closing, Mr. Starkey asked Interim Commissioner Bates to prepare communication to the legislature and
53 Governor, on behalf of the Board of Health, outlining the policy gaps that were not able to be included in the
54 emergency rules. The Board of Health has a responsibility to protect the public health of citizens and any policy
55 considerations should be shared with policymakers for future considerations.

- 1
2 b) **Consideration, Possible Action and Vote for Final Adoption of Rules**
3 **Mr. Skillings moved Board approval for final adoption of the rules as presented with exception**
4 **to Oklahoma Administrative Code (OAC) 310:681-2-11 and OAC 310:681-1-4.**
5 **Second Dr. Legako. Motion Carried.**

6
7 **AYE: Alexopulos, Gerard, Grim, Krishna, Legako, Osterhout, Payton, Skillings, Starkey**

8
9 **Mr. Skillings moved Board approval to amend OAC 310:681-2-11 of the proposed rules presented as**
10 **follows:**

- 11 (c) **Medical marijuana products may only be dispensed to a patient or caregiver in the following forms:**
12 **(1) pill;**
13 **(2) oil;**
14 **(3) topical forms, including gels, creams or ointments;**
15 **(4) a form medically appropriate for administration by vaporization or nebulization, excluding**
16 **flower, dry leaf or plant form;**
17 **(5) tincture; or**
18 **(6) liquid**
19 (d) **Medical marijuana product may not be dispensed to a patient or a caregiver in flower, dry leaf or**
20 **plant form.**

21 **Second Dr. Alexopulos. Motion Carried.**

22
23 **AYE: Alexopulos, Gerard, Krishna, Skillings, Starkey**

24 **NAY: Grim, Legako, Osterhout, Payton**

25
26 **Dr. Gerard moved Board approval to amend OAC 310:681-1-4 of the proposed rules presented as follows:**
27 **“Dispensary Manager” means a person who is a current licensed pharmacist in good standing with the**
28 **Oklahoma Board of Pharmacy and knowledgeable in the specialized functions of medical marijuana**
29 **product preparation and dispensing, including the safety standards and quality assurance. This**
30 **knowledge may be obtained through medical marijuana training and/or previous experience in a**
31 **medical marijuana dispensary. ~~A dispensary manager may also be a licensed healthcare provider (e.g.~~**
32 **~~pharmacist, etc.)~~**

33 **Second Mr. Osterhout. Motion Carried.**

34
35 **AYE: Alexopulos, Gerard, Grim, Krishna, Osterhout, Payton, Skillings, Starkey**

36 **NAY: Legako**

37
38 **REPORT OF THE INTERIM COMMISSIONER**

39 Mr. Bates thanked the board members for their attendance and actions taken on the rules. He was impressed with
40 the OSDH team and the work accomplished around SQ 788 and expressed gratitude to all OSDH staff for their
41 contributions. He provided a brief update on fiscal practices and shared that all employees will be paid out of the
42 correct fund/account on the upcoming pay period ending July 7. That is a big step forward and the finance staff
43 continues to make steady progress. He is hopeful that the search for a Chief Financial Officer (CFO) is nearing
44 completion. Mr. Bates acknowledged the partnership with the Office of Management and Enterprise Services
45 (OMES) team has been outstanding and thanked them for their assistance both on the fiscal side and for
46 developing IT solutions for the implementation of SQ 788. In closing, he shared that he will continue outreach to
47 community partners, stakeholders and the county health departments to repair and rebuild relationships.

48
49 **NEW BUSINESS**

50 **No new business.**

51
52 **ADJOURNMENT**

53 **Mr. Skillings moved Board approval to Adjourn. Second Alexopulos. Motion carried.**

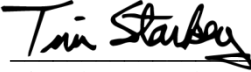
54
55 **AYE: Alexopulos, Gerard, Grim, Krishna, Legako, Osterhout, Payton, Skillings, Starkey**

1 The meeting adjourned at 11:58 a.m.

2

3 Approved

4

5 

6 Timothy E. Starkey, M.B.A.

7 President, Oklahoma State Board of Health

8 August 1, 2018

9
10