

CATTARAUGUS COUNTY BOARD OF HEALTH

1 Leo Moss Drive, Olean, NY 14760, Tel. (716) 373-8050, Fax (716) 701-3737

Established 1923

Joseph Bohan, MD, President

James Lapey, Vice-President

Giles Hamlin, MD
Zahid Chohan, MD
Sondra Fox, RN
Richard Haberer
Georgina Paul, FNP
Theresa Raftis
James Snyder

MINUTES

March 4, 2015

The 834th meeting of the Cattaraugus County Board of Health was held at St. Bonaventure Clubhouse Restaurant, Route 417, Allegany, New York on March 4, 2015.

The following members were present:

Dr. Joseph Bohan

Richard Haberer

Dr. Zahid Chohan

James Lapey

Dr. Giles Hamlin

Theresa Raftis

Sondra Fox, RN

James Snyder

Also present were:

Kevin D. Watkins, MD, MPH, Public Health Director

Thomas Brady, County Attorney

Linda Edstrom, County Legislator

Paula Stockman, County Legislator

Donna Vickman, County Legislator

Gilbert Witte, MD, Medical Director

Dave Porter, Hearing Officer

Susan Andrews, Director of Patient Services

Raymond Jordan, Sr. Public Health Sanitarian

Debra Lacher, Secretary to Public Health Director

Eric Wohlers, Director of Environmental Health

Rick Miller, Olean Times Herald

The meeting was called to order by Dr. Bohan. The roll was called and a quorum declared.

Mr. Snyder made a motion to approve the minutes of the Board of Health meeting held on February 12, 2015. It was seconded by Dr. Hamlin, and unanimously approved.

Dr. Witte made a motion to approve the Professional Advisory minutes from January 21, 2015. It was seconded by Sondra Fox, and unanimously approved.

Dr. Bohan reported to the board that Sondra Fox was approved by the Legislature to serve another 6 year term of the Board of Health which will expire on December 31, 2020.

DIRECTORS REPORT: Dr. Watkins extended his congratulations to Mrs. Fox in her reappointment to the Board of Health for another 6 year term.

Dr. Watkins updated the Board on the influenza activity in NYS, he stated that during the week ending February 21st it appears that the influenza activity level is still categorized as geographically wide spread with (56) counties and NYC reporting laboratory confirmed influenza in their respective counties. There were (2,083) laboratory confirmed influenza reports, this was a 33% decrease over the previous week. The number of patients that were admitted to the hospital with laboratory confirmed influenza or hospitalized patients newly diagnosed with laboratory confirmed influenza in NYS was (481) during the week ending February 21st, that is a 24% decrease over the previous week. There has been (1) influenza pediatric death reported in NYS during this reporting period, and there have been (5) influenza associated pediatric deaths reported earlier this season; this brings our grand total to (6) pediatric deaths this season. Since the week ending January 23rd however, Cattaraugus County has seen a steady decline in the number of influenza cases. Cattaraugus County has seen no new local laboratory confirmed influenza positive tests in residents within the county during the week ending February 27th and a total of only (8) laboratory confirmed influenza positive tests since our last meeting three weeks ago. There have been no deaths due to influenza in Cattaraugus County. Normally, influenza season usually lasts thirteen weeks; currently we are at week eleven. There is a possibility that there will be a second wave of influenza activity that could be caused by a different influenza virus strain. Nearly 60% of the influenza associated hospitalizations have been among people (65) years of age and older. The influenza vaccine is still the first line of defense to prevent influenza and because of the low effectiveness rate of the vaccine, an antiviral, such as a neuraminidase inhibitor (i.e. Tamiflu), is recommended within the first 48 hours of signs of influenza to reduce complications.

Dr. Watkins informed the Board that there have been (16) more measles cases reported to the Centers for Disease Control and Prevention (CDC) last week, bringing the national total to (170) cases so far this year, about three fourths of the cases are part of a large ongoing multistate outbreak linked to Disneyland in California.

Dr Watkins went on to say that most of the United States (US) measles outbreaks are related to travel. Visitors to the U.S. do not have to show that they have been vaccinated against measles and unvaccinated Americans can travel abroad and bring the virus back with them. They can then infect others who haven't been vaccinated including babies and people who refuse or cannot get the vaccine. The vaccination is safe and effective despite what is being reported. Studies have shown no correlation between the measles, mumps, and rubella vaccine and autism in children.

Dr. Watkins updated the Board on the Ebola epidemic, he stated that the total confirmed, probable, and suspected cases of Ebola are now up to (23,694) between the three countries in West Africa (Liberia, Guinea, and Sierra Leone) with a death total that has now risen to (9,589). He added that the Health Department has recently received a grant for \$38,000 to continue its preparation for an Ebola outbreak. We will host a countywide training and an educational seminar on preparing for an Ebola disaster.

Dr. Watkins informed the Board that last week, Willcare, Inc., who provides a range of skilled home health and personal care services through (16) locations in New York, Connecticut, and Ohio, were acquired by a company in Louisville, Kentucky. The company is called Almost Family, and they have bought out Willcare for nearly fifty million dollars. He explained that Willcare is our largest contracting licensed home care agency for our Certified Home Health Agency (CHHA). He added that he spoke with Todd Brason, one of the co-owners, and has been assured that nothing will change, and that there will be no disruption of service. Mr. Brason has been invited to come speak to the Board at a future meeting and be available to answer any questions that the Board might have regarding this acquisition.

Dr. Bohan asked if the new company has a good reputation for providing services. Dr. Watkins stated that he has seen their website and it appears to be a well established company but you can only tell so much through a website.

Mr. Snyder asked how the brutal cold weather has affected the public health of the community. Dr. Watkins stated that we have seen a number of respiratory illnesses this season, but not a high number of influenza cases, no unusual number of hypothermia, frostbite, or any other adverse conditions secondary to the weather itself has been reported. Dr. Witte suggested that we may be seeing less Influenza due to the fact that people are staying home instead of mingling in the public because of the severe cold weather we have been experiencing.

Dr. Chohan asked about the possibility of mandating vaccine and doing away with religious and philosophical exemptions. Dr. Watkins reported that because of the recent measles outbreak, several states have chosen to legislate that they will no longer allow any type of exemptions for children vaccines. He went on to say that in New York State we still allow religious and or medical exemptions. Measles can lead to encephalitis and then to death. In Cattaraugus County we have close to a 90% vaccination rate, where we fall short is a sector of our community, due to philosophical reasons, refuses to get vaccinated, and they are our Amish community. It is because nearly 90% of our county's population is vaccinated that the Amish community is protected, it's called herd immunity, and as long as those around them are vaccinated they are less likely to contract the disease. However, when they travel outside of our community, (i.e. travel to other states) they can expose themselves and bring the virus back to the community leading to outbreaks among those not vaccinated. He stated that he is working with a few physicians who have expressed an interest in coming to visit the Cattaraugus County's Amish community and engaging them about vaccinating. Dr. Watkins added that mandating vaccines for children is a legislative act and it will probably have to occur on the state level.

Dr. Watkins reported that the county attorney and the health department are working together to amend the current local law regarding electronic (e) cigarettes. The state has adopted a state statute that prohibits the sale of e-cigarettes to minors. Samples of e-cigarettes and a copy of the Cattaraugus County local law number 16-2011, which prohibits the use of e-cigarettes and herbal cigarettes where tobacco use is disallowed, were distributed to those in attendance.

Dr. Watkins presented a power point presentation of e-cigarettes and discussed its components, cost, use, and health and safety issues. There was discussion on how e-cigarettes have become attractive to adolescents due to the multiple liquid flavors now available in e-cigarettes.

Dr. Watkins summarized his presentation by stating that the department wants to strengthen and reduce loopholes that might exist in our local law, in particular, removing the language "open to the public" since areas of business may have basements and kitchens that are not open to the public and workers may use the areas to vape on their e-cigarettes. The plan is to present the amended local law to the Board for approval and then submit to the legislators for final adoption.

Dr. Witte shared a flyer he received in his mail that advertised Jack's house of smokes, advertising a carton of cigarettes for as little as \$16.99. There are no warning labels on these circulars, which also advertise vaporizers, e-cigarettes, and chewing tobacco.

Mr. Snyder questioned the scope of the county's policy on e-cigarettes. Dr. Watkins stated that the county prohibits use of e-cigarettes where we prohibit tobacco use including restaurants, bars and workplaces. Mr. Snyder inquired if there were statistics regarding the number of users of e-cigarettes within our county. Dr. Watkins stated while he didn't have the exact numbers for our county, it is evident with the growth of vaping lounges that the sale of e-cigarettes has become quite popular in our county. Dr. Bohan added that he had a report from the Cleveland Clinic that stated that e-cigarette sales have doubled every year since their introduction in the US in 2007, and tripled in sales in 2013. He added that e-cigarettes also doubled among high school students, from 4.7% in 2011 to 10% in 2012.

NURSING DIVISION REPORT: Mrs. Andrews reported that the department had their unannounced state survey conducted for the Certified Home Health Agency (CHHA) from January 21st - February 10th and had received their statement of deficiencies. Corrective action plans must be submitted by March 6th. Items that were cited included problems with personnel records of contracted individuals, and some patient care issues.

Mrs. Andrews reported that the homecare census is currently (396) patients.

Mrs. Andrews informed the Board that the long term (LT) care program that has always been operated by the nursing division is ending. Patients will have to move into a managed long term care program. The current clients will be given the choice of different community based long-term care service programs that is available for enrollment. Once the patients have chosen their new deliverer of service, we will assist the managed long term care programs in caring for these patients. Dr. Witte questioned how many patients are currently served by the Health Department in the LT care program. Mrs. Andrews stated there are (43).

ENVIRONMENTAL HEALTH DIVISION: Mr. Wohlers reported that the recent water emergency in Bradford, Pennsylvania was due to a serious transmission line leak that left the community without water for over a week. The Bradford Hospital used a certified bulk water hauler from Limestone, New York to supply water for critical functions at the hospital. Some water suppliers within Cattaraugus County have been thawing out frozen customer service lines due to the extreme cold weather we have been experiencing.

Mr. Wohlers stated that the City of Olean also had (2) more water main breaks this week. He added that many of the lines are buried too shallow and should be buried at least four or five feet underground.

Mr. Wohlers informed the Board that the Environmental Health division has made a real effort to switch over to an electronic inspection database. He added that efforts are being made to preserve but scan all the old paper records into the computer databases. The department is now connected to the states electronic inspection form database. The state will supply the environmental health staff with (8) computer tablets as early as April 1st to use as field inspection tools. Everything will then be completed electronically.

Mr. Wohlers stated that there are three community water systems that have acquired large grants or loans that have construction projects that should begin early this summer. Those communities include Randolph, Cattaraugus, and West Valley. The West Valley project, which is projected to cost over (3) million dollars, is expected to completely replace their water system, which is over a hundred years old, in (2) years.

All of the 2015 water sampling schedules have been completed and have been electronically sent to all our water suppliers. Currently we are also assisting with the annual water quality reports that have to be mailed out by the middle of May.

Mr. Wohlers reported that the department is working on the annual report for 2014; the report will be finalized and given to the Board and the County legislators.

Hearing Officer David Porter submitted the following enforcement case for Board action:

DOCKET 14-041

Thomas A. Gilray, Sr. Sherwood Court 1474 Four Mile Road, Allegany, New York 14706 Violations: 10 NYCRR Part 5-1.42 (d) (5) (vii) failed to monitor for lead and copper in the drinking water in Sherwood Court for the compliance period of 6/1/14 to 9/30/14.

Previous dockets 13-014, 13-038

Administrative Hearing: 2-10-2015

<u>Public Health Sanitarian</u>: Chris A. Covert appeared for CCHD and was sworn in. <u>Respondent</u>: Thomas A Gilray, respondent did not show, was properly served.

Testimony of Ms. Covert:

- Peoples Exhibit #1 Enf.-1 was read and affirmed to be true and correct.
- 2. P. Ex. #1-a. a civil compromise of \$200.00 was offered with no reply.
- 3. P. Ex. #2 a letter dated 2-10-14 to the respondent providing the 2014 water sample schedule and the revisions to the lead and copper rule.

DOCKET 14-041 (continued):

- P. Ex. #3 Email to the respondent and water operator for the 2014 water sample schedule.
- 5. P. Ex. #4 NYS water sample schedules report for Sherwood Court.
- 6. P. Ex. #5 letter dated 2-4-15 to the respondent from C. Covert regarding 2015 water sample schedule, revisions to lead and copper rule and a reminder of monetary penalty if not completed on time.
- P. Ex. #6 Sample letter provided for respondent for test results to Customers sent 2-4-15
- 8. P. Ex. #7 lead education information to respondent sent 2-4-15.
- P. Ex. #8 information sent to Laurie Jobe, water operator for the respondent which is identical to P. Ex. #4 through P. Ex. #7 sent on 2-4-15.
- 10. P. Ex. #9 letter dated 12-2-14 to the respondent with a CC to L. Jobe, water operator for the respondent. Subject matter notice of violation for not performing sampling and testing for lead and copper for the compliance period 6/1/14 through 9-30-14.

Hearing Officer Findings:

That the respondent failed to monitor for lead and copper in the drinking water in Sherwood Court for the past four years.

Recommendation:

- 1. Mr. Gilray be fined in the amount of \$400.00 for failure monitor for lead and copper in the drinking water in Sherwood Court for the compliance period of 6-1-14 9-30-14. The fine must be paid on or before 3-31-15 or a \$10.00 per day per diem will be added for every day late.
- 2. Failure of Mr. T. Gilray to not perform the monitoring per CCHD guidelines for lead and copper during the Compliance period of 6/1/15-9/30/15 at Sherwood Court will result in a fine and proceedings started to pull the respondent's permit to operate Sherwood Court.

Discussion was held amongst the Board regarding the size of the operation, and its past ownership. A motion made by Mr. Haberer to accept the Hearing Officer's recommendation; seconded by Mr. Lapey, unanimously approved.

Dr. Bohan made a request that per advisement from the County Attorney, Tom Brady, that the Board should enter into executive session for legal consultation. A motion was made by Mrs. Fox to enter executive session, seconded by Mr. Lapey, and unanimously approved.

Old Business: Dr. Watkins reported that at the last meeting the Board discussed an ongoing case about Inferno Studios Docket #12-002. Since the last meeting, Dr. Watkins stated that he has been in contact with a representative of the respondent. There was an agreement between Dr. Watkins and the representative that the department would accept a \$1,000 fine, however the representative insisted that the department expunge all previous reference to their business in prior minutes. After much discussion, Mr. Snyder made a motion to accept the compromise fine, but to supplement the records stating that this matter has been resolved and the case has been closed but only after the fine has been paid in full. Ms. Raftis seconded, and the motion was unanimously approved by the Board.

New Business: Dr. Watkins extended an invitation to the Board members to attend the Cattaraugus County Healthy Livable Communities Consortium meeting which will be held tomorrow, March 5th at the Bethany Lutheran Church, Olean from 11AM-1PM. One of Dr. Watkins colleagues from Chicago, Dr. Peter Orris, will be the guest speaker; his topic is thinking globally and acting locally.

There being no further business to discuss, a motion to adjourn was made by Mr. Lapey, and it was seconded by Ms. Raftis and unanimously approved.

Respectfully submitted,

Kevin D. Watkins, M.D., M.P.H.

Secretary KDW/dl

LOCAL LAW NUMBER 16 - 2011 COUNTY OF CATTARAUGUS, NEW YORK

Pursuant to Article 13F of the Public Health Law.

A LOCAL LAW REGULATING ELECTRONIC CIGARETTES ("E-CIGARETTES") AND HERBAL CIGARETTES

BE IT ENACTED by the County Legislature of the County of Cattaraugus as follows:

<u>SECTION 1. Legislative Intent:</u> The Legislature hereby makes the following findings and determinations:

- a) The Legislature hereby finds and determines that new, unregulated high-tech smoking devices, commonly referred to as electronic cigarettes or e-cigarettes, have recently been made available to consumers. To "smoke" e-cigarettes, users inhale vaporized liquid nicotine created by heat through an electronic ignition system. The vapors are expelled through a cartridge that usually contains a concentration of pure nicotine. The cartridge and ignition system are housed in a device created to look like a traditional cigarette, cigar or pipe. After inhaling, the user then exhales the heated vapors producing a "cloud" of undetermined substances that is virtually indistinguishable from cigarettes, cigars and pipes.
- b) The Legislature also finds that the nicotine content in ecigarettes can vary in doses and presents a significant risk of rapid and or continual addiction.
- c) The Legislature also finds that it is not in the best interests of the County or its residents to permit the use of e-cigarettes in public places or to permit their sale to persons under the age of eighteen (18).
- d) The Legislature also determines that protecting Cattaraugus County residents from an untested nicotine product like e-cigarettes represents sound public health and fiscal policy.
- e) Therefore, the purpose of this Local Law is to prohibit the smoking of e-cigarettes, herbal cigarettes, and like products in public places where traditional forms of smoking are already disallowed and to ban the sale of such products to persons under the age of eighteen (18).
- SECTION 2. Definitions: As used in this Local Law, the following terms shall have the meanings indicated:
- a) "electronic cigarette" or "e-cigarette" shall mean any battery operated device designed to emit a nicotine vapor upon inhalation without

- being lit. E-cigarettes are composed of a battery, a heating element or atomizer, and a cartridge. This term shall include such devices whether they are manufactured as e-cigarettes, e-cigars, e-pipes or under any other product name or style.
- b) "electronic cigarette cartridge" or "e-cigarette cartridge" means a component of an e-cigarette that contains liquid nicotine.
- c) "food service establishment" and "person" shall, for the purpose of this local law, be defined as such terms are defined in Public Health Law Section 1399-aa.
- d) "herbal cigarettes" (also called tobacco free cigarettes or nicotine-free cigarettes) shall mean any product made primarily of an herb or combination of herbs, and intended to be smoked in any of the methods that tobacco is smoked, including but not limited to, as cigarette, cigar or pipe filler.
- e) "Board" shall mean the Cattaraugus County Board of Health. SECTION 3. Sale to Minors Prohibited:
- a) Any person operating a place of business wherein electronic cigarettes are sold or offered for sale is prohibited from selling such electronic to individuals under eighteen (18) years of age, and shall post in a conspicuous place a sign upon which there shall be imprinted the following statement: "SALE OF ELECTRONIC TO PERSONS UNDER 18 YEARS OF AGE IS PROHIBITED BY LAW". Such sign shall be printed on a white card in red letters at least one-half inch in height.
- b) Sale of electronic cigarettes shall be made only to an individual who demonstrates, through (1) valid drivers license or non-drivers identification card issued by the Commissioner of Motor Vehicles, the federal government, any United States territory, commonwealth or possession, the District of Columbia, a state government within the United States or a provincial government of the Dominion of Canada; or (2) a valid passport issued by the United States government or any other country; or (3) an identification card issued by the Armed Forces of the United States, that the individual is at least eighteen (18) years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty five (25) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of electronic cigarettes to an individual under eighteen (18) years of age.

- (c) (1) No retailer or vendor shall display or store products containing herbal or electronic cigarettes, electronic cigars, electronic pipes, or under any other product name or style, in a manner which allows direct access to the product by the customer prior to the purchase.
- (2) No vendor shall allow vending machines containing electronic cigarettes, electronic cigars, electronic pipes, or under any other product name or style to be placed in any location accessible to a person under the age of eighteen (18).
- (3) (i) Any person operating a place of business wherein electronic cigarettes are sold or offered for sale may perform a transaction scan as a precondition for such purchases.
- (ii) In any instance where the information deciphered by the transaction scan fails to match the information printed on the driver's license or non-driver identification card, or if the transaction scan indicates that the information is false or fraudulent, the attempted transaction shall be denied.
- (iii) In any proceeding pursuant to this local law, it shall be an affirmative defense that such person had produced a driver's license or non-driver identification card apparently issued by a governmental entity, successfully completed that transaction scan, and that the electronic cigarettes had been sold, delivered or given to such person in reasonable reliance upon such identification and transaction scan. In evaluating the applicability of such affirmative defense, the Board shall take into consideration any written policy adopted or implemented by the seller to effectuate the provisions of this local law. The use of a transaction scan shall not excuse any person operating a place of business wherein electronic cigarettes are sold, or the agent or employee of such person, from the exercise of reasonable diligence. Notwithstanding the above provisions, any such affirmative defense shall not be applicable in any civil or criminal proceeding, or in any other forum.

SECTION 4. Restrictions on Smoking Herbal or E-Cigarettes:

The smoking of herbal or electronic cigarettes shall not be permitted and no person shall smoke electronic or herbal cigarettes in indoor areas open to the public in which smoking is prohibited or restricted pursuant to Public Health Law Section 1399-o. For violations of this section, it shall be an affirmative defense that during the relevant time period actual control of the indoor area open to the public was not exercised by the respondent, but rather by a lessee, a sub-lessee or any other person. To establish an

affirmative defense, the respondent shall submit an affidavit and may submit any other relevant proof indicating that the respondent did not exercise actual control of said area during the relevant time period. Such affidavit and other proof shall be mailed by certified mail to the Board within 30 days of receipt of such notice of violation.

SECTION 5. Enforcement:

- a) The Board shall have sole jurisdiction to enforce the provisions of this local law.
- b) If the Board determines after a hearing that a violation of section 3 of this local law has occurred, the Board may impose a civil penalty in the same amount as provided in Public Health Law Section 1399-ee(2), as the same may be amended from time to time. Presently, such civil penalties are as follows: in the minimum amount of \$300, but not to exceed \$1,000 for a first violation, and a minimum of \$500, but not to exceed \$2,000 for each subsequent violation. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit the Board from commencing a proceeding for injunctive relief to compel compliance with this local law.
- c) If the Board determines after a hearing that a violation of Section 4 of this local law has occurred, the Board may impose a civil penalty in the same amount as provided in Public Health Law Section 1399-ee(2), as the same may be amended from time to time. Presently, such civil penalties are as follows: in the minimum amount of \$300, but not to exceed \$1,000 for a first violation, and a minimum of \$500, but not to exceed \$2,000 for each subsequent violation. No other penalty, fine or sanction may be imposed, provided that nothing herein shall be construed to prohibit the Board from commencing a proceeding for injunctive relief to compel compliance with this local law.
- d) Hearings held pursuant to the authority of this local law shall be conducted pursuant to the procedures set forth in the Cattaraugus County Sanitary Code by the Board or its designee.
- e) The decision of the Board shall be reviewable pursuant to Article 78 of the Civil Practice law and Rules.
- f) The County Attorney may bring an action in the name of Cattaraugus County and/or the Board to recover the civil penalty provided by this local law in any court of competent jurisdiction.
- SECTION 6. Reverse Preemption: This Local Law shall be null and void on the day that State-wide or federal legislation goes into effect, incorporating

either the same or substantially similar provisions as are contained in this law, or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Cattaraugus. The County Legislature may determine by resolution whether or not identical or substantially similar state-wide legislation has been enacted for purposes of triggering the provisions of this section.

SECTION 7. Applicability: This law shall apply to all actions occurring on or after the effective date of this Local Law.

SECTION 8. Severability: If any clause, sentence, paragraph, subdivision, section or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair or invalidate the remainder thereof but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this law, or in its application to the person, individual, corporation, firm partnership, entity or circumstance directly involved in the controversy in which such order or judgment shall be entered.

SECTION 9. SEQRA Determination: This Legislature, being the state environmental quality review act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II Action pursuant to Section 617.5 (c) (20), (21), and/or (27) of Title VI of the New York Code of Rules and Regulations and within the meaning of Section 8-0109 (2) of the New York Environmental Conservation Law as a promulgation of regulations, rules, policies, procedures and legislative decisions in connection with continuing agency administration, management and information collection. The County Administrator is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

SECTION 10. Effective Date: This law shall take effect sixty days after its filing in the Office of the Secretary of State.

Rese	olution	Referred to:	
Finance		Human Services	
Co. Operations		Develop. & Ag	
DPW		Public Safety	
Senior Services		Labor Relations	
Strategic Planning			