

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of April 9, 2014

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

**PUBLIC HEALTH COUNCIL
MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH
Henry I. Bowditch Public Health Council Room, 2nd Floor
250 Washington Street, Boston MA**

Docket: Wednesday, April 9, 2014, 9:00 AM

1. ROUTINE ITEMS:

- a. Record of the Public Health Council Meeting of March 12, 2014 **(Vote)**
- b. Record of the Public Health Council Meeting of March 27, 2014 **(Vote)**

2. DETERMINATION OF NEED

- a. Project #4-3C32 Boston Medical Center: New Construction and renovation to consolidate two campuses **(Vote)**

BMC has applied for a DoN for substantial capital expenditure involving a project that will centralize all inpatient services on the former Boston City Hospital campus.

- b. Project #4-1576 The Commons in Lincoln: Establish 32 Level II bed nursing facility for Type A Continuing Care Retirement Community **(Vote)**

This application, which qualifies for “unique” application status pursuant to DoN Regulations, seeks to establish a new 32-bed nursing facility in Lincoln

- c. Significant Change to approved DoN Project #4-3C24 of Brigham and Women’s Hospital **(Vote)**

Brigham and Woman’s Hospital seeks to amend a project approved in September 2013 to consolidate certain ambulatory services in a largely research building on its main campus in Boston.

3. DRAFT REGULATION

Proposed amendments to Regulation Consolidation Project 105 CMR 500.000: *Good Manufacturing Practices for Food* **(Informational Briefing)**

4. DRAFT REGULATION:

Proposed amendments to 105 CMR 445.000: *Minimum Standards for Bathing Beaches (State Sanitary Code, Chapter VII)* **(Informational Briefing)**

5. INFORMATIONAL PRESENTATION:

- a. Commissioners Presentation- Update on Declaration of Public Health Emergency

6. EXECUTIVE SESSION

Public Health Council

Presented below is a summary of the meeting, including time-keeping, attendance and votes cast.

Date of Meeting: Wednesday, April 9, 2014

Beginning Time: 9:10 am

Ending Time: 11:22am

Attendance and Summary of votes

Board Member	Attended	Item 1b	Item 1c	Item 2a	Item 2b	Item 2c
		Records of the Public Health Council Meeting of March 12, 2014	Records of the Public Health Council Meeting of March 27, 2014	Project #4-3C32 Boston Medical Center: New Construction and renovation to consolidate two campuses	Project #4-1576 The Commons in Lincoln: Establish 32 Level II bed nursing facility for Type A Continuing Care Retirement Community	Project #4-3C24 of Brigham and Woman's Hospital: Consolidation of certain ambulatory services in a large research building on Campus
Cheryl Bartlett	Yes	Yes	Yes	Yes	Yes	Yes
Edward Bernstein	Yes	Yes	Yes	Recusal	Yes	Yes
Derek Brindisi	Yes	Yes	Yes	Yes	Yes	Yes
Harold Cox	Yes	Yes	Yes	Recusal	Yes	Yes
John Cunningham	Yes	Yes	Yes	Yes	Yes	Yes
Michele David	No	-	-	-	-	-
Meg Doherty	Yes	Yes	Yes	Yes	Yes	Yes
Michael Kneeland	Yes	Yes	Yes	Yes	Yes	Yes
Paul Lanzikos	No	-	-	-	-	-
Denis Leary	Yes	Yes	Yes	Yes	Yes	Yes
Lucilia Prates-Ramos	Yes	Yes	Yes	Yes	Yes	Yes
Jose Rafael Rivera	Yes	Yes	Yes	Yes	Yes	Yes
Meredith Rosenthal	Yes	Yes	Yes	Yes	Yes	Recusal
Alan Woodward	Yes	Yes	Yes	Yes	Yes	Yes
Michael Wong	Yes	Yes	Yes	Yes	Yes	Yes
Summary	13 members attended	13 Approved with votes	13 Approved with votes	11 Approved with votes	13 Approved with votes	12 Approved with votes

(M): Made motion (2nd): Seconded motion

PROCEEDINGS

A regular meeting of the Massachusetts Department of Public Health's Public Health Council (M.G.L. C17, §§ 1, 3) was held on Wednesday, April 9, 2014 at the Massachusetts Department of Public Health, 250 Washington Street, Henry I. Bowditch Public Health Council Room, 2nd Floor, Boston, Massachusetts 02108.

Members present were: Department of Public Health Commissioner Cheryl Bartlett (chair), Mr. Derek Brindisi, Mr. Jose Rafael Rivera, Ms. Meg Doherty, Mr. Harold Cox, Dr. Michael Kneeland, Dr. John Cunningham, Mr. Denis Leary, Dr. Michael Wong, Dr. Meredith Rosenthal, Dr. Alan Woodward, Dr. Edward Bernstein, and Ms. Lucilia Prates-Ramos

Absent member(s) were: Dr. Michele David, and Mr. Paul Lanzikos.

Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Commissioner Bartlett called the meeting to order at **9:10 AM** and reviewed the agenda.

Commissioner Bartlett recognized General Counsel Donna Levin who is leaving DPH after 36 years of service and presented her with a Commissioner's citation

Dr. Woodward and Mr. Cox also congratulated Attorney Levin and thanked her for her guidance, leadership and support over her years with DPH.

Attorney Levin thanked the membered, and hoped that her path would cross again with the PHC members.

ITEM 1: Minutes

a. Record of the Public Health Council Meetings of March 12, 2014

Mr. Cunningham made the motion to approve the minutes of March 12, 2014. The motion was seconded by Mr. Brindisi. The revised minutes were approved by **13** members voting in the affirmative. There were no absetentions or recusals.

b. Record of the Public Health Council Meeting of March 27, 2014

Dr. Wong made the motion to approve the minutes of March 27, 2014. The motion was seconded by Mr. Rivera. The minutes were approved by **12** members voting in the affirmative. Dr. Woodward abstained as he was not here for the March 27th meeting.

Two edits to the minutes are needed adding in the name of fallen firefighter Lt. Edward Walsh and a typo on page five.

All approved with the edits.

ITEM 2: Determination of Need

a. Project #4-3C32 Boston Medical Center: New Construction and renovation to consolidate two campuses (Vote)

BMC has applied for a DoN for substantial capital expenditure involving a project that will centralize all inpatient services on the former Boston City Hospital campus.

Dr. Wong commented that since BMC is consolidating, they are in effect downsizing the adult capacity, and assume that this has been determined by occupancy. Is there any impact on the surgical capacity? Also concerned with Marathon Monday approaching and the events of last year, is this recommended? It was impressive what hospitals were able to do after the bombing last year.

Commissioner Bartlett stated for the record that there are two recusals for this vote: Cox and Bernstein

Ms. Jane Barry of BMC responded to Dr. Wong's concerns regarding bed capacity stating that the reduction is due to patient volume, and many units are being taken out of service. BMC is consolidating

and closing units in Newton pavilion in order to consolidate into one unit, based on experience, history and using data to project the future.

Mr. Andy Ulrich of BMC stated that this wouldn't affect capacity for in-patient or volume during crisis. Surgical capacity under one roof allows for flexibility in hospital.

Concerns about boarding and patient task force were raised by Dr. Woodward, and commented that Massachusetts was among the first to do away with ambulance diversion. Dr. Woodward asked BMC to explain how if they are closing 30% of beds, how can they ensure no backup in the emergency department

Mr. Ulrich stated that the Patient Flow committee at BMC looked at this issue and how to get individuals into the hospital, and believe that the consolidation within the ED will have a positive effect getting people through. Currently resources are spread in two or three different areas and use the beds are limited.

Dr. Woodward stressed that he wanted to make sure that BMC was not boarding patients in the ER.

Dr. Woodward made a motion to place a condition on the DoN that BMC report and continue to report flow metrics in addition to the ones that are already required, and that a surveyor goes in during the construction phase to ensure that not seeing a compromise of patient care.

BMC commented that the main focus of care is not to compromise patient care.

Dr. Cunningham seconded the motion to place a condition on the DoN for BMC. The motion of condition passed, with Mr. Cox and Dr. Bernstein recused themselves.

Dr. Woodward made a motion to allow for the DoN by BMC, Dr. Wong seconded, the motion passed with Mr. Cox and Dr. Bernstein recusing themselves.

b. Project #4-1576 The Commons in Lincoln: Establish 32 Level II bed nursing facility for Type A Continuing Care Retirement Community **(Vote)**

This application, which qualifies for "unique" application status pursuant to DoN Regulations, seeks to establish a new 32-bed nursing facility in Lincoln

Dr. Woodward questioned whether the escrow account was sufficient to provide for this facility for a lifetime of care?

Jere Page, DoN Analyst for DPH stated that the facility was in process of selling remaining units when assisted living section is completed.

Comments concerning payment by residents were made, specifically about an individual who runs out of funds to cover their expenses. If Medicaid cannot pay for services, would an individual have to leave a facility?

Bernie Plovnick, director of the DoN program for DPH stated that there are terms stated in the resident's agreement, and sometimes a special fund established. Tax returns are checked and entry fees to pay down. Full and fair disclosure then it is responsibility of Lincoln. Understand that Medicaid is not an option

Dr. Bernstein raised concerns about individuals with Alzheimer's and how they are factored in.

Stephanie Handelson, COO stated that there is an assisted living community, and will have full memory care under the assisted living act. If an individual needs skilled nursing, then they would transfer over to the appropriate

Mr. Leary made a motion to accept the DoN for the Commons in Lincoln. Dr. Cunningham seconded the motion.

All accepted.

- c. Significant Change to approved DoN Project #4-3C24 of Brigham and Women's Hospital **(Vote)**

Brigham and Woman's Hospital seeks to amend a project approved in September 2013 to consolidate certain ambulatory services in a largely research building on its main campus in Boston. There were no questions for Brigham and Woman's staff. The Commissioner noted one recusal: Meredith Rosenthal.

Dr. Cox made a motion to accept, and Mr. Rivera seconded. All approved.

ITEM 3: Draft Regulation: *Proposed amendments to Regulation Consolidation Project 105 CMR 500.000: Good Manufacturing Practices for Food (Informational Briefing)*

Suzanne Condon, Associate Commissioner and Director for the Bureau of Environmental Health, Michael Moore-Director, Food Protection Program and Pricilla Fox, Deputy General Counsel presented Proposed Amendments to proposed amendments to Regulation Consolidation Project 105 CMR 500.000: Good Manufacturing Practices for Food.

Following the presentation, Commissioner Bartlett opened up the floor for discussion.

Mr. Cox stated that he appreciate the consolidation of a difficult regulations, and wondered if these regulations would require more new training for implementation?

Ms. Condon responded that these regulations are different from retail food where the burden of enforcement rests with local boards of health. For that reason we don't anticipate significant impact at the local level, with the exception of milk, where local farm entities impacted by these regulations are inspected by the state.

Mr. Cox asked about marijuana infused products, and Ms. Condon responded that regulations dealing with these types of products would be separate from the food regulations since MIPS are not considered.

Mr. Cox asked whether there is a variation between states regarding food regulatory actions and why they might be. Ms. Condon responded that there is fair consistency and that the Governor had asked for a review of some older regulations and tries to streamline them. States are also being encouraged to conform with federal guidelines so that there is a level playing field and comply with interstate commerce. DPH may come back to council as federal rules change in part of an assurance that if we need to take action we will have regulatory authority.

Dr. Kneeland asked if there was any overlap of state, federal and local health in regards to food safety regulations.

Ms. Condon outlined that the state has limited authority over local health and that local officials enforce food safety regulations. The boards of health do inspections based upon visit categories and in high-risk food settings inspections are done frequently. The state does the inspections for entities in MA. Fed gov. has some dual responsibility, but most of those inspections are done under contract to the FDA.

Dr. Woodward thanked BEH staff for being proactive in this area and asked about the regulations surrounding poultry and mobile processing units.

Mike Moore, Director of Food Protection Program explained that by statute local board of health will always have some authority. These regulations create an opportunity that an inspector could walk in and investigate.

Mr. Brindisi asked about whether there have been considerations to revising local public health regulations, specifically the sanitary code.

Ms. Condon stated that there is currently a position posted that will exclusively review older regulations. For example, pool regulations haven't been updated since the 90s and the disease control regulations need a revision as well.

ITEM 4: DRAFT REGULATION: Proposed amendments to 105 CMR 445.000: Minimum Standards for Bathing Beaches (State Sanitary Code, Chapter VIII) (Informational Briefing)

Mr. Cox raised concerns about changing the regulations which would allow for beaches that test with a contamination sample on day 1 to remain open and be tested on day 2, and that both samples had to exceed the single sample water quality standard, *or* one sample of bathing water that exceeds the single sample water quality standard when an additional sample is not collected on the following day.

Questions were raised about the exposure to individuals who swim and who the liability falls to if an individual does become sick due to exposure.

Ms. Condon stated that beaches with historic contamination problems will still need to close on day 1. Further, if there is known contamination they will close beaches, especially on anything non-routine. DPH will work with local health officials to identify beaches requiring day 1 closure in advance of beach season, and will also train local board of health staff to provide uniform testing. One of the reasons for looking to restructure closing procedures is that it creates unnecessary closures and costs for the local health agents, and causes economic losses to communities and businesses connected with those beaches.

Many municipalities preemptively close knowing that certain levels are going to be high, for example, when it rains. This is all the type of information that involves technical assistance on a routine basis.

Dr. Woodward asked if it was possible to establish a second level threshold or mechanism to close down a beach. Ms. Condon stated that she would take under consideration and evaluate existing data.

Dr. Wong asked what types of locations are tested and does it fresh water ponds?

Ms. Condon stated that there are indicator organisms at marinas and fresh water bodies. For example certain organisms will indicate if A is high then B will be high.

ITEM 5: INFORMATIONAL PRESENTATION: DPH Commissioner Update

There were no questions regarding the Commissioner's presentation, however Dr. Woodward asked about a presentation on Flu Immunization and Health Care Workers. There is a time crunch to be sure that we have regulations for next influenza season. It was explained that the data will not be available until late April/early May and that DPH can present after that time. There were concerns that if we delay until May/June can we bring draft regulations could be in place (finalized) by October. The consensus by DPH staff was that that was a possibility.

Dr. Woodward also mentioned the letter congratulating CVS/Caremark for the banning of tobacco products in their stores. The Commissioner indicated that the letter would need to go through the approval process and then to the members. Commissioner Bartlett, Dr. Kneeland and Dr. Cunningham recused themselves as state employees.

Following the presentation, Commissioner Bartlett opened the floor up for discussion.

The meeting adjourned at 11:06 AM on a motion by and passed unanimously without discussion.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. DoN Pending List
3. Minutes of the Public Health Council meeting of March 12, 2014 and March 27, 2014
4. Proposed amendments to Emergency Medical Services System, for EMT certification based on National Registry of EMT examination and certification
5. Proposed amendments to Minimum Requirements for Personal Flotation Devices for Minor Children at Municipal and Recreational Programs or Camps
6. Proposed amendments to 105 CMR 100.000, *Determination of Need*.
7. Memo to PHC and draft regulation
8. Copies of all power point presentations (emailed upon conclusion of the meeting)

Commissioner Cheryl Bartlett, Chair