

BOARD:  
Allen Amsler  
Chairman  
Mark S. Lutz  
Vice Chairman



Catherine B. Templeton, Director

*Promoting and protecting the health of the public and the environment*

BOARD:  
R. Kenyon Wells  
L. Clarence Batts, Jr.  
Ann B. Kirol, DDS  
John O. Hutto, Sr., MD

## **Minutes of the January 10, 2013, meeting of the**

### **South Carolina Board of Health and Environmental Control**

The South Carolina Board of Health and Environmental Control met on Thursday, January 10, 2013 at 10:30 a.m. in the Board Room of the South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, S.C. (Attachment 0-1)

The following members were in attendance:

Allen Amsler, Chairman  
Member-at-Large

Mark S. Lutz, Vice-Chairman  
1<sup>st</sup> District

R. Kenyon Wells  
2<sup>nd</sup> District

L. Clarence Batts  
4<sup>th</sup> District

Ann B. Kirol, DDS  
5<sup>th</sup> District

John O. Hutto, Sr., MD  
6<sup>th</sup> District

Also in attendance were Catherine Templeton, Director; W. Marshall Taylor, Jr., General Counsel; Angela Wertz, Acting Clerk; Elizabeth Potter, Legal Counsel; Department staff and members of the public. (Attachment 0-2)

*Mr. Amsler stated notice of this meeting had been provided to all persons, organizations and news media, which have requested notification, as required by Section 30-4-80(e) of the South Carolina Code of Laws.*

The meeting opened with Ms. Potter serving as Legal Counsel to the Board.

#### **Item 1: Board Minutes of the December 13 meeting** (Attachment 1-1)

*Mr. Wells moved to amend the minutes from the December Board meeting – (item 11 references Mr. Wells who was not present at the meeting). Mr. Batts moved, seconded by Mr. Wells, to replace Mr. Wells' name with that of Mr. Lutz on Item 11 and to approve the minutes as submitted for the December 13 meeting as amended. The Board voted and Motion carried.*

*Note by Clerk of Board – December 13 minutes were amended as requested and approved.*

**Item 2: Administrative and Consent Orders issued by Environmental Quality Control** (Attachment 2-1)

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated twelve (12) Consent Orders and three (3) Administrative Orders had been issued with total penalties of \$94,175.

After discussion, *the Board accepted this item as information.*

Mr. Taylor arrived and served as Legal Counsel.

**Item 3: Orders issued by the Office of Ocean and Coastal Resource Management** (Attachment 3-1)

Ms. Carolyn Boltin-Kelly, Deputy Director, Office of Ocean and Coastal Resource Management, stated three (3) Consent Orders had been issued with total penalties of \$2,200.

After discussion, *the Board accepted this item as information.*

**Item 4: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation**  
(Attachment 4-1)

Ms. Melinda Bradshaw, Health Regulation Liaison, stated six (6) Consent Orders and seven (7) Administrative Orders had been issued with total penalties of \$153,000.

After discussion, *the Board accepted this item as information.*

**Item 5: Request for a first Board extension of Certificate of Need (“CON”) SC-10-27 issued to Sunnyside Healthcare Commons of Hilton Head, LLC d/b/a Beacon Harbor Geriatric Psychiatric Care, Bluffton, South Carolina, for the construction of a psychiatric hospital to include twenty-two psychiatric beds.**  
(Attachment 6-1)

Ms. Beverly Brandt, Director, Health Facilities and Services, presented this item.

Sunnyside/Beacon Harbor is requesting additional time for implementation of Certificate of Need SC-10-27 stating PACE encountered several unanticipated challenges with respect to the funding of the project.

After discussion, *Dr. Hutto moved, seconded by Mr. Batts, to approve this extension because substantial progress has been made with no potentially negatively affected parties and a recognized need for this type of facility. The Board voted and Motion carried.*

**Item 6: Request for a second Board extension of Certificate of Need SC-10-15 issued to Sunnyside Healthcare Commons of Hilton Head, LLC d/b/a Beacon Harbor Subacute Care, Bluffton, South Carolina, for the construction of the a one hundred twenty (120) bed nursing home that will not participate in the Medicaid (Title XIX) Program.** (Attachment 6-1)

Ms. Beverly Brandt, Director, Health Facilities and Services, presented this item.

Sunnyside/Beacon Harbor is requesting additional time for implementation of Certificate of Need SC-10-15 stating PACE encountered several unanticipated challenges with respect to the funding of the project.

After discussion, **Mr. Lutz moved, seconded by Dr. Kirol, to approve this extension because substantial progress has been demonstrated. The Board voted and Motion carried.**

**Item 7: Handling of Requests for Review requiring action by January 10, 2013** (Attachment 7-1)

**Mr. Lutz moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of obtaining legal advice under the attorney-client privilege on Docket Nos., 12-RFR-64, -65, and -67. The Board voted and Motion carried.**

Chairman Amsler stated the Board was back in public session. While in Executive Session no actions were taken.

After discussion, **Mr. Batts moved, seconded by Mr. Lutz, not to conduct a final review conference on Docket No. 12-RFR-64, Greenfield Industries, Inc., because the wrong parties were at the table. The Board voted and Motion carried.**

Mr. Taylor commented that the postmark was illegible and it was presumed the letter was mailed to the clerk on December 21. After discussion, **Mr. Lutz moved, seconded by Mr. Batts, not to conduct a Final Review Conference on Docket No. 12-RFR-65, Chechessee Creek Watershed TMDL, because Department staff had addressed their concerns. The Board voted and the Motion carried.**

After discussion, **Mr. Lutz moved, seconded by Dr. Kirol, not to conduct a Final Review Conference on Docket No. 12-RFR-66, Rodger Willis, because it appeared staff did due diligence. The Board voted and Motion carried.**

After discussion of the Board's authority in the case with regard to the Savannah River, **Mr. Wells moved, seconded by Mr. Batts, not to conduct a Final Review Conference on Docket No. 12-RFR-67, South Coast Mitigation Group. The Board voted and Motion carried.**

Ms. Potter served as legal counsel for Docket No. 13-RFR-01.

After discussion, **Mr. Batts moved, seconded by Dr. Kirol, not to conduct a Final Review Conference on Docket No. 13-RFR-01, SC State Ports Authority, because the case was currently in litigation. The Board voted and Motion carried.**

**Item 8: Recommendations of the Certificate of Need Review Panel** (Attachment 8-1)

Ms. Pamela Dukes, Deputy Director Health Regulations, presented this item to the Board.

Appointed by the South Carolina Board of Health and Environmental Control in January 2012, the Certificate of Need (CON) Review Panel (Panel) included twenty-four (24) members who represented a broad range of stakeholder interests. The Panel sought to improve the CON process through user/provider input. This included the following goals:

- Streamline the CON process, making it less onerous.
- Standardize the weighting of criteria within the CON Regulation.
- Examine the current statute as it relates to the changing needs within the community/population/circumstances.
- Evaluate instances in which CON should and should not be required.

The Panel met on September 12, 2012, to finalize the recommendations for Board review.

After discussion, ***Dr. Hutto moved, seconded by Mr. Batts, to go into Executive Session for the purpose of obtaining legal advice under the attorney-client privilege. The Board voted and Motion carried.***

*Chairman Amsler stated the Board was back in public session. While in Executive Session no actions were taken.*

After further discussion, ***Dr. Kirol moved, seconded by Mr. Batts, to direct staff to draft and pursue, as appropriate, regulatory and procedural changes necessary to implement recommendations 1, 2 and 4 of the CON Review Panel dated September 12, 2012, and to the extent the General Assembly has requested other reform suggestions from the Board, the Board supports the idea of a “loser pays” statute.***

After discussion, ***Mr. Batts moved, seconded by Dr. Hutto, to amend the original motion and add Panel recommendation 19 and that DHEC staff be encouraged to consider pursuit of the remaining recommendations as to the possibilities (i.e. statutory change, regulatory change, economic/financial impact, etc.) and report back to the Board. The Board voted and Motion to amend carried.***

***The Board voted on the amended Motion and the Motion carried.***

#### **Item 9: Agency Affairs**

Director Templeton discussed the new Board member, Charles Joye, and reorganization of the agency. *Mr. Amsler had to leave the meeting and Mr. Lutz presided for the remainder of the meeting.*

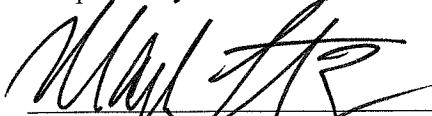
#### **Item 11: Legal Report**

Mr. Taylor presented the proposed revisions to the Request for Review procedures. The Board discussed the draft procedures and Mr. Taylor agreed to revise and report back to the Board.

Mr. Lutz adjourned the meeting.

All referenced attachments are made a permanent part of these minutes.

Respectfully submitted,

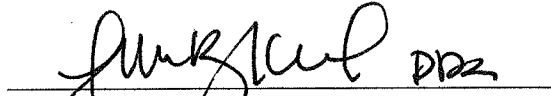


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Mark Lutz, Vice-Chairman

Minutes approved this 14<sup>th</sup> day of February 2013.

ATTEST:



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Ann B. Kirol, DDS

#### Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes of December 13 meeting
- 2-1 Administrative and Consent Orders issued by EQC
- 3-1 Orders issued by Ocean and Coastal Resource Management
- 4-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 5-1 Request for extension of CON SC-10-27
- 6-1 Request for extension of CON SC-10-15
- 7-1 Handling of Requests for Final Review requiring action by February 14, 2013
- 8-1 CON Review Panel Recommendations
- 10-1 *Draft* Final Review Procedure