

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
South Carolina Board of Health and Environmental Control
November 8, 2012**

The South Carolina Board of Health and Environmental Control met on Thursday, November 8, 2012 at 9:00 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
1st District

R. Kenyon Wells
2nd District

L. Clarence Batts
4th District

Ann B. Kirol, DDS
5th District

John O. Hutto, Sr., MD
6th District

Also in attendance were Catherine Templeton, Director, W. Marshall Taylor, Jr., General Counsel, Lisa Lucas Longshore, Clerk, 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.

Item 1: Board Minutes of the October 11 and October 15 meetings(Attachment 1-1)

Mr. Batts moved, seconded by Dr. Kirol, to approve the minutes as submitted for the October 11 and October 15 meetings. The Board voted and the Motion carried.

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

Ms. Robin Stephens, Assistant to the Deputy Director, EQC, stated fifteen (15) Consent Orders and one (1) Administrative Orders had been issued with total penalties of \$44,780.

The Board accepted this item as information.

Item 3: Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
(Attachment 3-1)

Ms. Pam Dukes, Deputy Director for Health Regulation, stated one (1) Suspension Order and one (1) Administrative Order had been issued with no total penalties.

The Board accepted this item as information.

Item 4: Orders issued by the Office of Ocean and Coastal Resource Management (Attachment 4-1)

Ms. Carolyn Boltin-Kelly, Deputy Director Office of Ocean and Coastal Resource Management, stated one (1) Consent Order had been entered with a penalty of \$1,000.

The Board accepted this item as information.

Item 5: Status Report – Environmental Fees and Time Frames (Attachment 6-1)

Ms. Shelly Wilson, Environmental Quality Control Liaison, Federal Facilities, presented this item.

The informational item included a report for the fourth quarter of the 2011-2012 fiscal year and summarized activity for the fiscal year as a whole. In addition, the report contained a staff update on the pilot programs for expedited permitting during the fourth quarter and fiscal year as a whole.

The Board accepted this item as information.

Item 13: Agency Affairs

Director Templeton updated the Board on the status of the security of the agency computer networks, programs and website.

Director Templeton presented a proposed Board meeting schedule for 2013.

Dr. Kirol moved, seconded by Mr. Batts, to approve the 2013 meeting dates. The Board voted and the Motion Carried. The Board will continue to meet on the second Thursday of each month. (Attachment 13-1)

Item 7: Request for a fifth Board extension of Certificate of Need (“CON”) SC-08-28 issued to Kershaw County Medical Center-Camden Medical Center for the construction of an outpatient medical office building to include a 16 slice CT scanner (Attachment 7-1)

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

Kershaw County Medical Center-Camden Medical Center asked for a fifth Board extension of Certificate of Need SC-08-28 for the construction of an outpatient medical office building. The request for the extension was

based on three primary factors: 1) the project is needed and would provide access to services such as urgent care, oncology and imaging services; 2) Kershaw Health has already made monetary investment by acquiring the real estate and architectural and engineering work; and 3) today's economic conditions have made it difficult to raise capital for projects. Kershaw Health demonstrated it has and will continue to make strategic operating decisions to remain financially viable in the future. Mr. Donnie Weeks, President and CEO, answered questions of the Board.

After discussion, ***Mr. Lutz moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of obtaining legal advice pertaining to the matter being discussed and covered by the attorney-client privilege. The Board voted and the Motion carried.***

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

After further discussion, ***Dr. Hutto moved, seconded by Mr. Wells, to grant a final nine month extension of CON SC-08-28. The Board voted and the Motion carried by a vote of 4-1 with Mr. Batts being the dissenting vote.***

Item 6: Request for Approval of the 2012-2013 South Carolina Health Plan (Attachment 6-1)

Mr. Doug Bowling, Chairman, South Carolina State Health Planning Committee, presented this item to the Board.

Mr. Bowling recommended the Board consider the proposed plan by chapter, for the Board to approve each chapter, if accepted, and for the Board then approve the plan in its entirety.

Chapter I - Introduction

Following presentation by Mr. Bowling and discussion, ***Mr. Batts moved, seconded by Dr. Kirol, to approve Chapter I as presented by the Committee and directed the Committee to consider adding quality standards to the next 2014-2015 South Carolina Health Plan. The Board voted and the Motion carried.***

Chapter II - Inventory Regions and Facility Categories

Following presentation by Mr. Bowling and discussion, ***Mr. Lutz moved, seconded by Mr. Batts, to approve Chapter II as presented by the Committee. The Board voted and Motion carried.***

Chapter III – Acute Care Hospitals

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Lutz, to approve Chapter III as presented by the Committee. The Board voted and Motion carried.***

Chapter IV – Psychiatric Services

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Batts, to approve Chapter IV as presented by the Committee. The Board voted and Motion carried.***

Chapter V – Rehabilitation Facilities

Following presentation by Mr. Bowling and discussion, ***Dr. Kriol moved, seconded by Mr. Batts, to approve Chapter V as presented by the Committee. The Board voted and Motion carried.***

Chapter VI – Alcohol and Drug Abuse Facilities

Following presentation by Mr. Bowling and discussion, ***Mr. Batts moved, seconded by Mr. Lutz, to approve Chapter VI as presented by the Committee. The Board voted and Motion carried.***

Chapter VII – Residential Treatment Facilities for Children and Adolescents

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Batts, to approve Chapter VII as presented by the Committee. The Board voted and Motion carried.***

Chapter VIII (A) (B) Cardiovascular Care

Mr. Les Shelton, Health Regulation, recommended changes to Chapter VIII(B) on behalf of the Committee as follows: change. 7. Cardiac Catheterization, Emergent and Elective PCI Without On-Site Cardiac Backup B. to read as follows: “The applicant has a diagnostic catheterization laboratory that has performed a minimum of 250 diagnostic catheterizations in the most recent year of data and can reasonably demonstrate that it will perform a minimum of 500 diagnostic catheterizations annually within three years of the initiation of services” to make it consistent with 8 A.” and to correct the definition of a comprehensive cardiac catheterization laboratory.

Following presentation by Mr. Bowling and discussion, ***Mr. Lutz moved, seconded by Mr. Batts, to approve Chapter VIII A and B with changes proposed by the staff as noted above. The Board voted and the Motion carried.***

Chapter VIII (C) Open Heart Surgery

Following presentation by Mr. Bowling and discussion, ***Mr. Batts moved, seconded by Dr. Kirol, to approve Chapter VIII C. as presented by the Committee. The Board voted and Motion carried.***

Chapter IX – Megavoltage Radiotherapy & Radiosurgery

Following presentation by Mr. Bowling and discussion, ***Mr. Lutz moved, seconded by Mr. Batts, to approve Chapter IX as presented by the Committee. The Board voted and Motion carried.***

Chapter X – Positron Emission Technology

Following presentation by Mr. Bowling and discussion, ***Mr. Batts moved, seconded by Mr. Lutz, to approve Chapter X as presented by the Committee. The Board voted and Motion carried.***

Chapter XI – Outpatient Facilities

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Wells, to approve Chapter XI as presented by the Committee. The Board voted and Motion carried.***

Chapter XII – Long Term Care Facilities and Services

Following presentation by Mr. Bowling and discussion, ***Mr. Lutz moved, seconded by Mr. Batts, to approve Chapter XII as presented by the Committee. The Board voted and Motion carried.***

Chapter XIII – Inventories of Inpatient Facilities and Emergency Facilities

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Wells, to approve Chapter XIII as presented by the Committee. The Board voted and Motion carried.***

Following presentation by Mr. Bowling and discussion, ***Dr. Kirol moved, seconded by Mr. Batts, to approve the 2012-2013 State Health Plan in its entirety with the changes approved for Chapter VIII (B), to be effective November 9, 2012 at 8:30 a.m. The Board voted and the Motion carried.***

Item 8: Final Consideration, Proposed New Regulation 61- , Standards for Licensing In-Home Care Providers (Attachment 8-1)

Ms. Gwen Thompson, Director, Division of Health Licensing, presented this item to the Board.

The Licensure of In-Home Care Providers Act of 2011, S.C. Code Section 44-70-10 et seq., directed the Department to promulgate regulations for the licensure of in-home care providers. To satisfy the requirements of Section 44-70-40 of the Act, the Department proposed a new regulation entitled, "Standards for Licensing In-Home Care Providers." The regulation will provide standards and procedures including license application and renewal procedures; criminal records checks for licensure applicants; drug testing of licensure applicant; responsibilities and duties of a licensee, including the requirements for bonding, record keeping and reporting; fees the Department may charge to process an application for a license, the issuance of the license, the renewal of a license and the reinstatement of a revoked or suspended license, and criteria that a licensee's employee, agent, independent contractor, or referral must satisfy before providing in-home care service. These criteria must include, but are not limited to, personal information, completion of a minimum education requirement, completion of minimum training and continuing education requirements and screening for communicable diseases; standards for liability and other appropriate insurance coverage; and sanctions the Department may impose for violation of this chapter, including the suspension or revocation of a license or the imposition of a monetary penalty.

This item is follow-up to the Public Hearing conducted at the October 11, 2012, where the Board recommended modifications in drug testing and health assessment as discussed during the public hearing. Staff worked with stakeholders and reached an agreement on both issues as presented to the Board.

After discussion, *Mr. Batts moved, seconded by Mr. Lutz, to find for the need and reasonableness of the proposed regulations and approve them for submission to the legislature for review. The Board voted and the Motion carried.*

Item 9: Final Review Conference, Docket No. 12-RFR-44, Decision dated July 24, 2012, to grant coverage of SWPPP for Farm Pond in York County under the NPDES General Permit for Storm Water Discharges from Large and Small Construction Activities (General Permit coverage number is SCR10Q591)
(Attachment 9-1)

Mr. Taylor introduced the matter to the Board. Mr. Stephen Hightower represented the Department. Mr. Michael Corley represented the Requestors, Mr. Ragin Craig, et al. Mr. Rich Fennell represented Dr. Lesslie.

After presentations (Attachment 9-2) and discussion, *Mr. Lutz moved, seconded by Dr. Kirol, to go into Executive Session for the purpose of deliberating and obtaining legal advice pertaining to the matter being discussed and covered by the attorney-client privilege. The Board voted and the Motion carried.*

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

After further discussion, *Mr. Wells moved, seconded by Mr. Batts, to uphold the staff decision and approve the coverage under the General Permit. The Board voted and the Motion carried.*

Item 10: Final Review Conference, Docket No. 12-RFR-46, Decision dated August 22, 2012, to deny a Certificate of Need for the construction/establishment of a one hundred-fifty (150) bed nursing care facility that does not participate in the Medicaid (Title XIX) program. (Attachment 10-1)

Mr. Taylor introduced the matter to the Board. Ms. Ashley Biggers, Esq. represented the Department staff. Mr. Wade Mullins, Esq., represented Chiquola Maison. Mr. David Summer, Esq., represented the Olive Leaf facilities, supporters of the staff decision.

After presentations (Attachment 10-2) and discussion, *Mr. Batts moved seconded by Mr. Wells, to go into Executive Session for the purpose of deliberating and obtaining legal advice pertaining to the matter being discussed and covered by the attorney-client privilege. The Board voted and the Motion carried.*

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

After further discussion, *Mr. Lutz moved, seconded by Mr. Batts, to overturn staff decision, finding that Chiquola Maison had met its burden of proof, and issue the Certificate of Need to Chiquola Maison for the construction/establishment of a one hundred-fifty (150) bed nursing care facility. The Board voted and the Motion carried.*

Item 11: Final Review Conference – Docket No. 12-RFR-49, Decision dated September 6, 2012, to issue a Fire and Life Safety Citation for the violation of standards. Requestor/Applicant – Carolina Center for Behavioral Health (Attachment 11-1)

Mr. Taylor introduced the matter to the Board. Ms. Ashley Biggers, Esq., represented the Department staff. Mr. David Summer, Esq., represented Carolina Center for Behavioral Health.

Dr. Kirol moved, seconded by Mr. Batts, to accept the recommendation of staff, to include all documents submitted to the Board in Docket No. 12-RFR-49 and all documents submitted and oral arguments presented to the Board in Docket No. 12-RFR-45 as part of the record in this matter, (Attachment 11-2) and to rescind the Staff decision and direct Department staff to (1) confirm the proposed means of egress conform to the requirements of the building code under which the Facility was constructed; (2) if conforming, obtain an opinion from the fire code official as to whether or not such proposed means of egress constitute a distinct hazard to life; and (3) proceed accordingly. The Board voted and the Motion carried.

Item 12: Handling of Requests for Review requiring action by December 13, 2012 (Attachment 12-1)

Ms. Elizabeth Potter, Esq. served as legal counsel to the Board for Docket Nos. 12-RFR-54 and 12-RFR-52.

After discussion, *Mr. Batts moved, seconded by Mr. Wells, not to conduct a Final Review Conference on Docket No. 12-RFR-54, SCE&G VC Summer NPDES Permit. The Board voted and the Motion carried.*

After discussion, *Mr. Batts moved, seconded by Dr. Kirol, not to conduct a Final Review Conference on Docket No. 12-RFR-52, Broad Creek Marina of Hilton Head. The Board voted and the Motion carried.*

After discussion, *Mr. Batts moved, seconded by Dr. Kirol, not to conduct a Final Review Conference on Docket No. 12-RFR-53, Dakota Hall Poultry Facility. The Board voted and the Motion carried.*

After discussion, *Dr. Kirol moved, seconded by Mr. Wells, not to conduct a Final Review Conference on Docket No. 12-RFR-55, High Cotton Farm. The Board voted and the Motion carried.*

After discussion, *Mr. Batts moved, seconded by Dr. Kirol, not to conduct a Final Review Conference on Docket No. 12-RFR-56, Friendship Community Care Home. The Board voted and the Motion carried.*

Item 11: Legal Report

Mr. Wells moved, seconded by Mr. Batts, to go into Executive Session for the purpose of obtaining legal advice pertaining to the matter in litigation and covered by the attorney-client privilege. The Board voted and the Motion carried.

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

There being no further business, Mr. Amsler declared the meeting adjourned.

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

Respectfully submitted,

Mark Lutz, Vice-Chairman

Minutes approved this 13th day of December 2012.

ATTEST:

Allen Amsler, Chairman

Attachments

- 0-1 Agenda
- 0-2 Attendance Roster
- 1-1 Minutes for October 11 meeting and October 15 conference call meeting
- 2-1 Administrative and Consent Orders issued by EQC
- 3-1 Administrative Orders, Consent Orders and Sanction Letters issued by Health Regulation
- 4-1 Orders issued by Ocean and Coastal Resource Management
- 5-1 Status Report – Environmental Fees and Time Frames
- 6-1 Request for Final Approval of the 2012-2013 South Carolina Health Plan
- 6-2 Comments received on State Health Plan
- 7-1 Request for a fifth Board extension of Certificate of Need (“CON”) SC-08-28 issued to Kershaw County Medical Center-Camden Medical Center
- 8-1 Final Consideration, Proposed New Regulation 61-____, Standards for Licensing In-Home Care Providers
- 9-1 Final Review Conference, Docket No. 12-RFR-44, Farm Pond in York County
- 9-2 Information presented to supplement the Administrative Record
- 10-1 Final Review Conference, Docket No. 12-RFR-46, Chiquola Maison CON denial
- 10-2 Information presented to supplement the Administrative Record
- 11-1 Final Review Conference, Docket No. 12-RFR-49, Carolina Center for Behavioral Health
- 11-2 Information presented to supplement the Administrative Record
- 12-1 Handling of Requests for Review requiring action by December 13
- 13-1 Agency Affairs – 2013 Board Meeting dates