

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of April 11, 2012

MASSACHUSETTS DEPARTMENT OF PUBLIC HEALTH

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

Docket: Wednesday, April 11, 2012, 9:00 AM

1. ROUTINE ITEMS: No Floor Discussion

- a) Introduction **(No Vote)**
- b) Record of the Public Health Council Meeting of January 11, 2012 **(Approved)**

2. DETERMINATION OF NEED:

Project Application Number 5-3C08 of Saint Anne's Hospital: for construction of three-story addition for replacement of 40 medical/surgical beds. **(Approved)**

3. REGULATION: No Floor Discussion

Request to promulgate final amendments to 105 CMR 100.000, *Determination of Need*, regarding substantial change in services for ambulatory surgery centers (ASCs) **(Approved)**

4. PRESENTATION: NO FLOOR DISCUSSION

"A Social Marketing Campaign to reduce substance use among African American Latino youth"

The Commissioner and the Public Health Council are defined by law as constituting the Department of Public Health. The Council has one regular meeting per month. These meetings are open to public attendance except when the Council meets in Executive Session. The Council's meetings are not hearings, nor do members of the public have a right to speak or address the Council. The docket will indicate whether or not floor discussions are anticipated. For purposes of fairness since the regular meeting is not a hearing and is not advertised as such, presentations from the floor may require delaying a decision until a subsequent meeting.

Public Health Council

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

Date of Meeting: Wednesday, April 11, 2012

Beginning Time: 9:10 AM

Ending Time: 11:45 AM

Attendance and Summary of votes

| Board Member | Attended | Item 1b | Item 2 | Item 3 |
|------------------------|---------------------------|---|--|---|
| | | Record of the Public Health Council Meeting of January 11, 2012 | Project Application Number 5-3C08 of Saint Anne's Hospital | Final amendments to 105 CMR 100.000, <i>Determination of Need</i> |
| John Auerbach | Yes | Yes | Yes | Yes |
| Helen Caulton - Harris | Yes | Yes | Yes | Yes |
| Harold Cox | Yes | Yes | Yes | Yes |
| John Cunningham | Yes | Yes | Yes (2 nd) | |
| Michele David | No | ----- | ----- | ----- |
| Muriel Gillick | No | ----- | ----- | ----- |
| Paul Lanzikos | Yes | Yes | Yes | Yes |
| Denis Leary | No | ----- | ----- | ----- |
| Lucilia Prates Ramos | Yes | Yes | Yes | Yes |
| Jose Rafael Rivera | Yes | Yes | Yes | Yes |
| Meredith Rosenthal | Yes | Yes | Yes | Yes (2 nd) |
| Albert Sherman | Yes | Yes (M) | Yes | Yes (M) |
| Michael Wong | Yes | Yes | Yes (M) | Yes |
| Alan Woodward | Yes | Yes (2 nd) | Yes | Yes |
| Barry Zuckerman | No | ----- | ----- | ----- |
| Summary | 11 members present | Approved with 11 votes | Approved with 11 votes | Approved with 11 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 11, 2012 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: Chair John Auerbach, Commissioner, Department of Public Health, Ms. Helen Caulton–Harris, Mr. Harold Cox, Dr. John Cunningham, Mr. Paul Lanzikos, Ms. Lucilia Prates Ramos, Mr. Jose Rafael Rivera, Dr. Meredith Rosenthal, Mr. Albert Sherman, Dr. Michael Wong and Dr. Alan Woodward. Members absent were: Dr. Michele David, Dr. Muriel Gillick, Mr. Denis Leary, and Dr. Barry Zuckerman. Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Chair Auerbach called the meeting to order at 9:10 AM and reviewed the agenda.

ITEM 1b: Record of the Public Health Council meeting of January 11, 2012

Chair Auerbach asked if there were any changes to the minutes of the Public Health Council meeting of January 11, 2012. There being none, Mr. Sherman made the motion to approve the minutes of January 11, 2011. After consideration, upon motion made and duly seconded, it was voted unanimously to approve the minutes as presented.

Voting in the affirmative were Chair Auerbach, Ms. Caulton–Harris, Mr. Cox, Dr. Cunningham, Mr. Lanzikos, Ms. Prates Ramos, Mr. Rivera, Dr. Rosenthal, Mr. Sherman, Dr. Wong and Dr. Woodward. There were no abstentions and no votes in opposition.

ITEM 2: Project Application Number 5-3C08 of Saint Anne's Hospital for construction of three-story addition for replacement of 40 medical/surgical beds.

Dr. Madeleine Biondolillo, Director of the Bureau of Health Care Safety and Quality addressed the Council and Jere Page, Senior Program Analyst for the Determination of Need Program addressed the Council.

Mr. Page described the capital construction project being proposed by Saint Anne's Hospital. "Specifically, the project involves new construction and renovation to build a three-story wing to replace 40 existing medical/surgical beds in all private rooms and connect the new wing to the existing facility." The project is further described in the staff summary.

After the summary, Craig Jesiolowski, President of St. Anne's Hospital joined Mr. Page and Dr. Biondolillo to address questions from the Council. Please see transcript for verbatim discussion.

Dr. Wong made the motion to approve the **Project Application No. 5-3C08 of Saint Anne's Hospital**. After consideration, upon motion made and duly seconded, it was voted to approve the application.

Voting in the affirmative were Chair Auerbach, Ms. Caulton–Harris, Mr. Cox, Dr. Cunningham, Mr. Lanzikos, Ms. Prates Ramos, Mr. Rivera, Dr. Rosenthal, Mr. Sherman, Dr. Wong and Dr. Woodward. There were no abstentions and no votes in opposition.

ITEM 3: Request to promulgate final amendments to 105 CMR 100.000, *Determination of Need*, regarding substantial change in services for ambulatory surgery centers (ASCs)

Ms. Carol Balulescu, Deputy General Counsel addressed the Council and provided an overview of the regulation, summarizing the regulation, the public comment period and requesting a final vote on the amendments.

The purpose of the amendments as described in the staff memorandum is to clarify existing Determination of Need (DoN) requirements as they relate to changes to ambulatory surgery centers (ASCs), particularly those that were grandfathered pursuant to certain provisions of chapter 305 of the Acts of 2008. This regulation was originally approved by the Public Health Council as an emergency amendment on January 11, 2012 and filed with the Secretary of the Commonwealth for emergency promulgation on February 10, 2012.

Eighteen parties submitted comments during the public testimony period. All comments focused on two topics, neither of which were the subject of the Emergency Amendment. The first was the concept of need as applied to ASCs, and the fact that there is currently no need for additional outpatient surgical capacity in the commonwealth. The second is the misconception that the amendments somehow sought to regulate the technology used in ASCs. No parties directly commented on the language in the emergency amendments, but rather recommended approval or rescission of the emergency amendments based on the position of the commenter on these side issues.

Following Ms. Balulescu's summary, Drs. Woodward, Rosenthal and Wong made comments related to the larger policy issue of regulating ambulatory surgery centers. Please see verbatim transcript for full.

Mr. Sherman made the motion to promulgate final amendments to **105 CMR 100.000, *Determination of Need***, regarding substantial change in services for ambulatory surgery centers (ASCs). After consideration, upon motion made and duly seconded, it was voted unanimously to approve the regulation as presented.

Voting in the affirmative were Chair Auerbach, Ms. Caulton–Harris, Mr. Cox, Dr. Cunningham, Mr. Lanzikos, Ms. Prates Ramos, Mr. Rivera, Dr. Rosenthal, Mr. Sherman, Dr. Wong and Dr. Woodward. There were no abstentions and no votes in opposition.

Recognition of Michael Botticelli

Prior to beginning Item # 4, Chair Auerbach introduced Mr. Michael Botticelli, the Director of the Bureau of Substance Abuse Services. Chair Auerbach recognized Mr. Botticelli for his 18 years of service to the Department and announced that he accepted a position as the Deputy Director of the White House Office of National Drug Control Policy, “a major position and one of enormous importance in terms of substance abuse work in the country.”

ITEM 4: “A Social Marketing Campaign to reduce substance use among African American and Latino youth”

Chair Auerbach introduced Michael Botticelli and Steven Keel, Director of Prevention for the Bureau of Substance Abuse Services. Mr. Botticelli and Mr. Keel described and showed examples of a social marketing campaign targeting Hispanic and African American youth. Council members gave suggestions on how to increase the reach of the campaign. Please see transcript for full discussion.

UPDATE: TOBACCO SALES IN PHARMACIES

Note: This item was not on the docket.

As discussed in previous meetings, the Council agreed to send a series of letters supporting initiatives that would reduce or eliminate the sale of tobacco in pharmacies. Dr. Woodward summarized the status of this initiative, saying that three different letters had been drafted, namely to pharmacies, to legislators and to the Board of Pharmacy. Dr. Woodward asked Council members to return any comments on the letters by the end of the week.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. Copy of the meeting notices to the Executive Office of Administration and Finance and the Secretary of the Commonwealth
3. Public health Council Meeting Minutes from January 11, 2011
4. Determination of Need Pending Projects List
5. Memorandum: Staff Summary for Determination of Need Applicant St. Anne’s Hospital
6. Memorandum: Request for Final Promulgation of Amendments to Regulations at 105 CMR 100.000: Determination of Need

Chair John Auerbach