

MINUTES OF THE PUBLIC HEALTH COUNCIL

Meeting of January 9, 2013

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, January 9, 2013, 9:00 AM

1. ROUTINE ITEMS: No Floor Discussion

- a. Introduction **(No Vote)**
- b. Record of the Public Health Council Meeting of September 19, 2012
(APPROVED)

2. DETERMINATION OF NEED: Category 2 Applications

- a. Project Application Number 4-1553 of 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center for renovations to 135-bed skilled nursing facility **(APPROVED)**
- b. Project Application Number 4-1554 of 178 Lowell Street Operating Company, LLC d/b/a Lexington Health Care Center for renovations to 201-bed skilled nursing facility **(APPROVED)**
- c. Project Application Number 4-1549 of Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center for renovations to 120-bed skilled nursing facility **(APPROVED)**

3. EMERGENCY REGULATION:

105 CMR 216.000, Massachusetts Wellness Tax Credit Incentive **(APPROVED)**

4. REGULATION:

Request final approval of amendments to 105 CMR 700.000 and 721.000 related to nurse midwife prescriptive practice **(APPROVED)**

5. REGULATION:

Request final approval of amendments to 105 CMR 700.000 and 701.000 related to the Prescription Monitoring Program **(APPROVED)**

6. PRESENTATION: Information Only / No Vote

"Update on the 2012 / 2013 Flu Season"

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, January 9, 2013

Beginning Time: 9:09 AM

Ending Time: 11:33 AM

Attendance and Summary of votes

Board Member	Attended	Item 1 b.	Item 2 a.	Item 2 b.	Item 2 c.	Item 3	Item 4	Item 5
		Record of Public Health Council Meeting of September 19, 2012	Determination of Need – Project Application Number 4-1553 of 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center for renovations to 135-bed skilled nursing facility	Project Application Number 4-1554 of 178 Lowell Street Operating Company, LLC d/b/a Lexington Health Care Center for renovations to 201-bed skilled nursing facility	Project Application Number 4-1549 of Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center for renovations to 120-bed skilled nursing facility	Emergency Regulation: 105 CMR 216.000, Massachusetts Wellness Tax Credit Incentive	Regulation: Request final approval of amendments to 105 CMR 700.000 and 721.000 related to nurse midwife prescriptive practice	Regulation: Request final approval of amendments to 105 CMR 700.000 and 701.000 related to the Prescription Monitoring Program
Lauren Smith	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Helen Caulton - Harris	Yes	Yes	2nd	Yes	Yes	Yes	2nd	Yes
Harold Cox	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
John Cunningham	Yes	Yes	Yes	2nd	Yes	Yes	Yes	Yes
Michele David	No	-----	-----	-----	-----	-----	-----	-----
Muriel Gillick	Yes	Yes	Recuse	Recuse	Recuse	Yes	Yes	Yes
Paul Lanzikos	Yes	2nd	Abstain	Abstain	Abstain		Yes	Yes
Denis Leary	No	-----	-----	-----	-----	-----	-----	-----
Lucilia Prates-Ramos	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Jose Rafael Rivera	Yes	M	Yes	Yes	M	M	M	Yes
Meredith Rosenthal	Yes	Yes	M	M	2nd	Yes	Yes	2nd
Albert Sherman	No	-----	-----	-----	-----	-----	-----	-----
Alan Woodward	Yes	M	Yes	Yes	Yes	2nd	Yes	M
Michel Wong	No	-----	-----	-----	-----	-----	-----	-----
Summary	10 members attended	Approved with 10 votes	Approved with 8 votes	Approved with 8 votes	Approved with 8 votes	Approved with 10 votes	Approved with 10 votes	Approved with 10 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, January 9, 2013 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 Dr. Lauren Smith, Commissioner, Department of Public Health, Ms. Helen Caulton- Harris, Dean Harold Cox, Mr. John Cunningham, Ms. Muriel Gillick, Mr. Paul Lanzikos, Ms. Lucilia Prates-Ramos, Mr. Jose Rafael Rivera, Dr. Meredith Rosenthal, and Dr. Alan Woodward. Absent members were Ms. Michele David, Mr. Denis Leary, Mr. Albert Sherman, and Dr. Michael Wong. Also in attendance was Attorney Donna Levin, General Counsel, Massachusetts Department of Public Health.

Chair Smith called the meeting to order at **9:09 AM** and reviewed the agenda.

ITEM 1 b: Record of the Public Health Council Meeting of September 19, 2012

Chair Smith asked if there were any changes to the minutes of the Public Health Council meeting of September 19, 2012. No changes were recommended. **Dr. Alan Woodward** made the motion to approve the minutes of September 19, 2012. After consideration, upon motion made and duly seconded by **Mr. Paul Lanzikos**, it was voted unanimously to approve the minutes as presented.

Voting in the affirmative were all **10** present members. There were no abstentions and no votes in opposition.

ITEM 2 a: DON Category 2 Application, Project Application Number 4-1553 of 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center for renovations to 135-bed skilled nursing facility

Mr. Bernard Plovnick, Director, DON Program, Dr. Madeleine Biondolillo, Director, Bureau of Health Care Safety and Quality and Mr. Iyah Romm, Director of Policy, Health Planning, and Strategic Development, Bureau of Health Care Safety and Quality presented DON Application # 4-1553 of 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center for renovations to 135-bed skilled nursing facility.

Dr. Meredith Rosenthal made the motion to approve Project # 4-1553 of 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center for renovations to 135-bed skilled nursing facility. After consideration, upon motion made and duly seconded by **Ms. Helen Caulton-Harris**, it was voted unanimously to approve the application as presented.

Voting in the affirmative were **8** present members. Dr. Muriel Gillick recused herself, and Mr. Paul Lanzikos abstained.

ITEM 2 b: DON Category 2 Application, Project Application Number 4-1554 of 178 Lowell Street Operating Company, LLC d/b/a Lexington Health Care Center for renovations to 201-bed skilled nursing facility

Mr. Bernard Plovnick, Director, DON Program, Dr. Madeleine Biondolillo, Director, Bureau of Health Care Safety and Quality and Mr. Iyah Romm, Director of Policy, Health Planning, and Strategic Development, Bureau of Health Care Safety and Quality presented DON Application # 4-1554 of 178 Lowell Street Operating Company, LLC d/b/a Lexington Health Care Center for renovations to 201-bed skilled nursing facility.

Dr. Meredith Rosenthal made the motion to approve Project # 4-1554 of 178 Lowell Street Operating Company, LLC d/b/a Lexington Health Care Center for renovations to 201-bed skilled nursing facility. After consideration, upon motion made and duly seconded by **Dr. John Cunningham**, it was voted unanimously to approve the application as presented.

Voting in the affirmative were **8** present members. Dr. Muriel Gillick recused herself, and Mr. Paul Lanzikos abstained.

ITEM 2 c: DON Category 2 Application, Project Application Number 4-1549 of Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center for renovations to 120-bed skilled nursing facility

Mr. Bernard Plovnick, Director, DON Program, Dr. Madeleine Biondolillo, Director, Bureau of Health Care Safety and Quality and Mr. Iyah Romm, Director of Policy, Health Planning, and Strategic Development, Bureau of Health Care Safety and Quality presented DON Application # 4-1559 of Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center for renovations to 120-bed skilled nursing facility.

Mr. Jose Rafael Rivera made the motion to approve Project # 4-1549 of Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center for renovations to 120-bed skilled nursing facility. After consideration, upon motion made and duly seconded by **Dr. Meredith Rosenthal**, it was voted unanimously to approve the application as presented.

Voting in the affirmative were **8** present members. Dr. Muriel Gillick recused herself, and Mr. Paul Lanzikos abstained.

ITEM 3: EMERGENCY REGULATION: 105 CMR 216.000, Massachusetts Wellness Tax Credit Incentive

Cheryl Bartlett, Director, Bureau of Community Health and Prevention, and Peggy Wiesenbergh, DPH Legal Council presented emergency regulation 105 CMR 216.000, Massachusetts Wellness Tax Credit Incentive. Ms. Bartlett Wellness introduced the wellness tax credit as providing credit incentives equal to 25% of program costs, and up to \$10,000 in any one tax year, to small businesses that implement approved wellness programs. The overall goal she said is to provide “smaller businesses” with expanded opportunity to implement wellness programs.

Mr. Jose Rafael Rivera made the motion to approve Emergency Regulation:105 CMR 216.000, Massachusetts Wellness Tax Credit Incentive. After consideration, upon motion made and duly seconded by **Dr. Alan Woodward**, it was voted unanimously to approve the emergency regulation as presented.

Voting in the affirmative were all **10** present members. There were no abstentions and no votes in opposition.

Item 4: REGULATION: Request final approval of amendments to 105 CMR 700.000 and 721.000 related to nurse midwife prescriptive practice

Dr. Madeleine Biondolillo, Director, Bureau of Health Care Safety and Quality, Mr. Iyah Romm, Director of Policy, Health Planning, and Strategic Development, Bureau of Health Care Safety and Quality and Alison Mehlman, Deputy General Counsel presented the request for final approval of amendments to 105 CMR 700.000 and 721.000 related to nurse midwife prescriptive practice. The amendments aim to promulgate regulations for the permitting nurse midwives to issue written prescriptions pursuant to and in accordance with M.G.L.c.94C. The amendments also aim to eliminate the requirements for a supervising physician to prescribe controlled substances and establish clinical protocols, to expand patient access to the practice of nurse midwifery. Both amendments are required by An Act Relative to Enhancing the Practice of Nurse Midwives (Chapter 24 of the Acts of 2012).

Mr. Jose Rafael Rivera made the motion to approve the request for final approval of amendments to 105 CMR 700.000 and 721.000 related to nurse midwife prescriptive practice. After consideration, upon motion made and duly seconded by **Ms. Caulton-Harris**, it was voted unanimously to approve the regulation as presented.

Voting in the affirmative were all **10** present members. There were no abstentions and no votes in opposition.

Item 5: REGULATION: Request final approval of amendments to 105 CMR 700.000 and 701.000 related to the Prescription Monitoring Program

Dr. Madeleine Biondolillo, Director, Bureau of Health Care Safety and Quality, and Alison Mehlman, Deputy General Counsel presented the request for final approval of amendments to 105 CMR 700.000 and 701.000 related to the Prescription Monitoring Program. These amendments adds definitions of “additional drug” and “investigation,” authorizes DPH to monitor additional drugs, clarifies requirements for electronic submission of PMP data by dispensers, and makes technical changes to provisions for the PMP Advisory Council and Medical Review Group.

Following the presentation, Council members discussed topics such as privacy, law enforcement, and what schedule certain drugs will fall under.

Dr. Alan Woodward made the motion to approve the request for final approval of amendments to 105 CMR 700.000 and 701.000 related to the Prescription Monitoring Program. After consideration, upon motion made and duly seconded by **Dr. Meredith Rosenthal**, it was voted unanimously to approve the regulation as presented.

Voting in the affirmative were all **10** present members. There were no abstentions and no votes in opposition.

Item 6: PRESENTATION: Information Only / No Vote “Update on the 2012 / 2013 Flu Season”

Kevin Cranston, Director, Bureau of Infectious Disease Prevention, Response and Services presented an update on the 2012/2013 flu season to members of the Council.

LIST OF DOCUMENTS PRESENTED TO THE PHC FOR THIS MEETING:

1. Docket of the meeting
2. Public Health Council Meeting Minutes from September 19, 2012
3. Determination of Need Pending Projects List
4. Staff Summary for Determination of Need by the Public Health Council – 57 Old Road to Nine Acre Corner Operating Company, LLC d/b/a Concord Health Care Center
5. Staff Summary for Determination of Need by the Public Health Council - 178 Lowell Street Operating, Company, LLC d/b/a Lexington Health Care Center
6. Staff Summary for Determination of Need by the Public Health Council - Park Marion and Vernon Streets Operating Company, LLC d/b/a Brookline Health Care Center
7. Memo for Proposed Emergency Regulation at 105 CMR 216.000: Massachusetts Wellness Tax Credit Incentive
8. Memo for request for Final Promulgation of Proposed Amendments to Regulations at 105 CMR 700.000 (Implementation of the Controlled Substances Act) and 105 CMR 721.000 (Standards for Prescription Format and Security) – Nurse Midwives

9. Memo for request for Final Approval of Proposed Amendments to Regulations Implementing the Controlled Substances Act, 105 CMR 700.000 and 105 CMR 701.000, Concerning the Prescription Monitoring Program
10. Memo for Semi-Annual Report on Adjudicatory Decisions

Chair Dr. Lauren A. Smith