



Public Health
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CATTARAUGUS COUNTY BOARD OF HEALTH

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Joseph Bohan, MD, President

James Lapey, Vice-President

Giles Hamlin, MD

Zahid Chohan, MD

Sondra Fox, RN

Richard Haberer

Georgina Paul, FNP

James Snyder

MINUTES

February 6, 2014

The 822nd meeting of the Cattaraugus County Board of Health was held at St. Bonaventure Clubhouse Restaurant, Route 417, Allegany, New York on February 6, 2014.

The following members were present:

Joseph Bohan, MD

Richard Haberer

Giles Hamlin, MD

James Lapey

Zahid Chohan, MD

Georgina Paul, NP

Sondra Fox, RN

James Snyder

Also present were:

Kevin D. Watkins, MD, MPH, Public Health Director

Kathleen Ellis, Administrative Officer

Thomas Brady, County Attorney

Linda Edstrom, County Legislator

Paula Stockman, County Legislator

Howard VanRensselaer, County Legislator

Debra Lacher, Secretary to Public Health Director

Eric Wohlers, Environmental Health Director

Raymond Jordan, Sr. Public Health Sanitarian

Susan Andrews, Director of Patient Services

Gilbert Witte, MD, Medical Director

David Porter, Hearing Officer

Rick Miller, Olean Times Herald

The meeting was called to order by Dr. Bohan. The roll was called and a quorum declared.

Mrs. Fox made a motion to approve the minutes of the December 10, 2013 meeting. It was seconded by Mr. Lapey, and unanimously approved.

Director's Report: Dr Watkins introduced his new secretary, Deb Lacher, who has been with the Health Department for over 20 years but has served in a different capacity prior to joining the administration team. Dr. Watkins shared communications that he had recently received. The first was addressed to Dr Bohan, and the Board. The letter was from Mr. Joseph Eade, who stated

that serving the public has given him more satisfaction and gratification than he ever could have imagined. He regrettably gives his resignation to the Board as he feels his health now precludes his ability to give the full measure of commitment that is deserved to the citizens of Cattaraugus County.

He went on to say it has been an incredible honor to serve on the Board of Health with all of his esteemed colleagues throughout the years. Dr. Watkins wished him well and said we would surely miss him. Mr. Eade's seat on the Board of Health is actually a seat sat aside on the Board for the city of Olean. The current Mayor, Mayor Aiello, submitted Theresa Raftis name for legislature appointment to the Board of Health. Once she is approved by the full legislature board on Wednesday, February 12, 2014, she will join the Board of Health at our next meeting in March.

The other communication was from Dr. Nirav Shah, New York State Commissioner of Health. He was writing to congratulate both the Board of Health and the Health Department on reaching a new milestone-celebrating 90 years as a local health department and wished us continued success as we serve the citizens of Cattaraugus County.

Dr Watkins asked to dedicate the meeting in honor of Deb Nichols our Health Educator, and Mr. Joseph Eade, retired Board of Health member.

The vacancy committee will meet on February 19, 2014, and Dr. Watkins reported that he has five vacancies within the Health Department that he will ask the committee to fill. Those positions include (2) Home Health Aides (HHA's), a Medical Record Technician, a Part-time Nurse Practitioner, and a Laboratory Supervisor.

Dr. Watkins requested the Board's approval of an increase in immunization fees. Those in attendance were given a copy of the proposed 2014 rates for approval. Dr. Bohan stated that this was not an unreasonable request. Mr. Haberer questioned whether we bid the vaccines out. Dr. Watkins assured him that all of the costs listed, were done after checking for the best price available. Dr. Chohan questioned "what if the patient can't afford the vaccine"? Dr. Watkins stated that we have three ways that we can direct this issue (1) under the affordable care act we now will try to help those that don't have insurance find an affordable option of healthcare which will then cover this cost (2) we can put them on a payment plan (3) placement under an STD category if appropriate. Mr. Lapey, questioned whether this rate schedule would be brought back to the board if there was a sizable increase for a new vote. Dr Watkins said that we would cover any nominal increases but they did not expect any large increases. Mr. Haberer made a motion to accept the rate schedule as proposed. It was seconded by Dr. Chohan and unanimously approved.

The accreditation team has been established within the Health Department and is moving forward in its quest to have the Health Department become accredited. This accreditation process is a process in which we agree to adopt a set of national standards for the Health Department. We will get measured on how we perform against those national standards and we will then become recognized nationally for meeting those standards. The goal of the accreditation process is basically to improve the quality of practice and performance of our Health Department. We have completed the Community Health Assessment and the Community Health Improvement Plan, two of the three components needed to begin the accreditation process. We are now working on the Strategic Plan

which should be completed by the end of next month. With all three documents in place, we will then send a letter of intent to the Public Health Accreditation Board (PHAB) and start the process of becoming nationally accredited.

The Health Department continues to monitor influenza activity in New York State and during the week ending on January 26th, the influenza activity level was categorized as wide spread. It was confirmed in 56 counties including New York City. There was 2,669 laboratory confirmed influenza reports which was about a 4% decrease from the previous week. The number of patients that were admitted to the hospital with laboratory confirmed influenza was 457 and once again this was about a 21% decrease from the previous week. There were no influenza associated pediatric deaths reported this week but there was (1) influenza associated pediatric death this season in New York City. Cattaraugus County had nearly (30) new local laboratory confirmed positive influenza tests during that week. The emergency room is seeing an increase in admissions for respiratory and fever complaints. There have been no deaths due to influenza in Cattaraugus County. We appear to be on the incline of our slope of influenza cases this season. We were one of the last counties in the state to report the widespread number of cases affecting our community. Influenza seen in the latest testing has revealed that Influenza A is the most prevalent this season. It is the same virus we saw in 2009 that caused the (influenza A H1N1) pandemic. This strand was included in our 2013-2014 vaccine, so if you have not received the influenza vaccine it is still not too late to get one.

Paula Stockman questioned whether statistics were inclusive of all areas within the county. Dr. Watkins confirmed that our statistics come from the State and are inclusive of all laboratories that would report any positive tests within our county. Dr. Watkins stated that there are a number of pending cases which are awaiting culture results.

Tobacco use is still the single most prevalent cause of death in the United States. Each year in the U.S. cigarette smoking and exposure to second hand smoke causes about 443,000 deaths a year. That is 1 in every 5 deaths. The economic loss is also staggering, smoking cause's disease resulting in about 96 billion dollars of healthcare costs annually. Cigarette smoking accounts for 25,000 deaths in New York State, smoking doubles the risk of a person for coronary artery disease, stroke, and increases the risk of developing lung cancer by 13 times for women and 23 times for men. Smoking also causes cancer of the esophagus, larynx, oral cavity, the stomach, kidney, and pancreas. More over tobacco has been linked to infertility, low birth weight, still-birth, and sudden infant death syndrome. Back in September 2013, Laurie Adams, and the tobacco coalition spoke to us regarding a request for the Board to consider a resolution to prohibit the sale of tobacco in pharmacies. There were 8 pharmacies that were identified as still selling tobacco products in our community. There were 4 rite-aides, CVS, Tops, Wal-Mart, and Walgreens. Just yesterday CVS announced it will no longer sell cigarettes and other tobacco products at their CVS Pharmacy stores starting October 1st. The retailer said this will make CVS the first chain of national pharmacies to take tobacco products off their shelves. This is a very bold public health decision and we would like to applaud them on their decision.

In the same venue Dr. Watkins talked about vaping. Vaping is the act of inhaling vapor from an electronic cigarette. Olean now has a vapor lounge called B4 Vapor Lounge located at 1214 West State Street. The new proprietor is Jeffrey Barry and he opened the lounge in November 2013. The lounge is a place where people can now gather to smoke these electronic cigarettes and they can try over 200 different custom flavor cartridges made by Mr. Barry. These flavors can be tobacco, blueberry, and raspberry, cotton candy, peppermint or cinnamon bun. He asserts that those samplings inside his store do not contain nicotine mix in it and a busy day for him would be about 50 – 70 customers. After consulting with the County Attorney it was determined that opening this establishment was not violating our clean indoor air act or the local law as it applies to e-cigarettes. Dr. Chohan inquired about the composition of an e-cigarette. Dr. Witte replied there is a great variety in composition; they contain varying amounts of nicotine. Dr. Chohan inquired whether the e-cigarettes are regulated by the FDA. Dr. Watkins confirmed that they are not regulated by the FDA.

Dr. Bohan stated due to the fact that Joseph Eade served as the Vice President for the Board we now need to fill that position as a result of his resignation. The nominating committee consists of Jim Lapey and Sondra Fox who have had discussions regarding this position and will now report their nominations. Sondra reported that the nominating committee would like to elect James Lapey to fill the position of Vice President of the Board. Dr. Bohan suggested that at this time since the proposed nominee was on the nominating committee if there were any other nominations from the floor we would take them at this time. No other nominations were made nor were further discussions presented. Dr. Bohan called for a vote to be taken for the nomination of Mr. James Lapey as Vice President, and Mr. Lapey's nomination was unanimously approved. Mr. Lapey thanked everyone and said he would be honored to serve.

Nursing Division Report: Mrs. Andrews reported that for communicable diseases, we had (20) cases of Chlamydia, (6) chronic Hepatitis C Virus cases and (1) isolated Giardia. The State has instituted a local health department (LHD) communicable disease performance improvement incentive program in November. Focus is to increase reimbursement to LHD that meet targets for timeliness and completeness of communicable disease reporting. The most recent report shows that we have improved by 10% to a total of 96% for timeliness and markedly improved for completeness at a 100% rate. The most interesting part of these statistics is that they can directly tie us to more funding.

Patti Williams conducted AFIX (assessment, feedback, incentive, and eXchange) visits to providers of daycares. One of the private providers visited in December was doing an excellent job except they were not entering their data into the state immunization registry. Mrs. Williams will work with them on getting the information logged into the registry.

Rabies post exposure vaccine, for the month of January was given to (1) person due to a dog bite, the dog could not be located.

Family planning/STD clinic- Lucy Coady, has returned to the county as a part time nurse practitioner who will be providing services in our Machias office on Friday afternoons; she is also a midwife who is proficient in Intrauterine Device (IUD) placements and Nexplanon (etonogestrel) implants. Mrs. Coady previously worked with us as a contracted Nurse Practitioner. She will mentor Gretchen Dowdy our physician assistant (PA) with IUD placements.

The Salamanca office was temporarily closed from January 7th -21st, due to frozen pipes. Everything is now safe and operational.

Mrs. Andrews reported that the family planning educator and a clinic nurse attended, a free one day training sponsored by the NYS Center of Excellence in Buffalo. The overall purpose is to increase the number of people leaving clinic with effective contraception by using counseling for behavior change and motivational interviewing. We are working to make this our standard way of approaching all patients.

There were no new confirmed lead cases in January but we are continuing to follow approximately 20 children who we are trying to get their blood lead levels down to less than (9 mg/dl).

Mrs. Andrews stated that there has been a new certified homecare agency that was approved by NYS to operate within Cattaraugus County. The TLC Health Network-Lake Shore Hospital has not yet setup their agency in Cattaraugus yet but has met the necessary requirements to conduct business. We have not seen any adverse effects on our census numbers currently our census is at 372 patients which is higher than our census last year at this time. Our volume continues to be good despite the addition of other certified agencies. Mrs. Andrews reported that she also attended a meeting with Olean General Hospital quality assurance and discharge planning staff, with other homecare, rehab, and skilled nursing facilities providers regarding the re-hospitalization rates. Although these rates have always been a concern, they have taken on additional importance as reimbursement is decreased if our re-hospitalization rates are determined to be unusually high.

Mrs. Andrews stated that the homecare division still has (2) full time registered nurses on medical leave at this time so the staffing is a little short.

Environmental Health Division Report: Eric Wohlers reported that the recent extreme cold weather snaps have been causing problems for our public water suppliers. Municipal employees have been thawing numerous frozen pipes and repairing main breaks caused by the polar vortex temperatures. The West Valley Demonstration Project (WVDP) also had their outside water clarifier freeze which required draining and mechanical repairs. This ultimately also caused them to have a turbidity violation in their finished filtered drinking water.

On January 15th the department did submit a new application to the NYS Division of Housing and Community Renewal (DHCR) to refund our community development block grant (CDBG) for another two years. The new program, entitled the Environmental Health Initiative 2014, will hopefully allow us to assist another 40+ low-income homeowners with septic and well water problems.

The department is preparing a response to the NYSDOH comments concerning our proposed county sanitary code revisions. We hope to have a final revised draft ready for Board of Health review and adoption soon.

The Health Department will have a booth again at the annual Olean Home Show in April. We use

this opportunity to conduct public health education related to many of our programs such as lead paint hazards, indoor radon testing, carbon monoxide poisoning, septic systems maintenance, drinking water testing, and bed bug infestations. This year we even plan to raffle off a dozen free home radon test kits.

Environmental Health continues to work with several communities that have major water system projects planned in 2014: the Village of Cattaraugus has a \$600,000 CDBG grant, the Town of Randolph has a \$3,740,000 grant/loan package from the NYS drinking water state revolving fund (DWSRF), the West Valley Crystal Company has a \$2,587,000 (0%) interest loan package for the DWSRF, the Town of Ellicottville is designing a new \$1.3 million water storage tank, and the WVDP is proposing to install new ground water wells to replace their surface water supply.

The department is working on our 2013 Annual Report which Dr Watkins will be sharing with the Board in the near future.

Mr. Porter reported the following enforcement cases for Board action:

DOCKET 12-027

VICTOR FARR, JR., 1702 Andrew Street, Olean

Violations: CCSC, Article II, Part 16.2.2 Letter was sent to Respondent on 10/17/13 informing him that an Administrative Hearing was scheduled for 11/5/13 for him to explain why he has not been able to connect to the public sewer system as ordered by the Board of Health on 10/3/12.

Administrative Hearing:

Sr. Public Health Sanitarian: Ray Jordan appeared for CCHD and was sworn.

Respondent: Mr. Farr appeared at hearing and was sworn. Enf. 1 was read and affirmed to be correct by Mr. Jordan.

Mr. Jordan's testimony is as follows:

- a) Mr. Farr's residence is not hooked up to the municipal sewage system provided by the Town of Olean
- b) People's Exhibit 1 is a copy of a letter dated 11/7/13 stating that a hearing would be held on 12/17/13 for non-compliance.

Mr. Farr's response is as follows:

- a) He ran out of money.
- b) He dug a 50' ditch to install the new hook-up and has 30' more to go.
- c) He has not applied for a permit to hook-up to the system.
- d) He did not own the residence when the Town of Olean municipal sewage system was put in.
- e) He is one year behind in taxes and does not have insurance, therefore does not qualify for grants.

Mr. Jordan and Mr. Farr agreed on a compliance date of 5/31/14 for sewage hook-up to the municipal system. The burden of compliance falls completely on Mr. Farr. He stated that he would strive for the 5/31/14 completion date.

Hearing Officer Finding: Mr. Victor Farr is not in compliance with the Board of Health Order dated 10/3/12.

Recommendation: That the Respondent meet the 5/31/14 compliance date for hook-up to the Town of Olean municipal sewer. Failure to meet the compliance date of 5/31/14 will result in a fine of \$50 and a \$10 per diem fine until the connection is completed and approved

Mrs. Fox made a motion to accept the Hearing Officer's recommendation; it was seconded by Mr. Haberer and unanimously approved.

Board Ordered: That the Respondent meet the 5/31/14 compliance date for hook-up to the Town of Olean municipal sewer. Failure to meet the compliance date of 5/31/14 will result in a fine of \$50 and a \$10 per diem fine until the connection is completed and approved

DOCKET 13-036

TAPATHA HOLLAMBY, 1722 & 1726 Butler Avenue, Olean

Violations: CCSC, Article I, Section 11.7 Respondent has not complied with the conditions offered in a notice of violation for which she, by her signature, agreed to on 2/19/13. Notice of Hearing with no stipulation/civil compromise was mailed 10/15/13.

Administrative Hearing:

Sr. Public Health Sanitarian: Ray Jordan appeared for CCHD and was sworn.

Respondent: Failed to appear at hearing.

Enf. 1 was read and affirmed to be correct by Mr. Jordan.

A brief history of 1722 & 1726 Butler Avenue located in the Town of Olean, NY 14760 and owned by Respondent follows:

- a) Respondent lives at 1726 Butler Avenue and 1722 Butler Avenue is rental property.
- b) Town of Olean installed a municipal sewer system and instructed all residents serviced by the sewer district to abandon their private septic systems and hook-up to the new municipal sewage system.
- c) Respondent agreed to comply with Board Order and hook-up both parcels by 2/19/13.
- d) Received permit to hook-up on 4/29/13 with completion date of 7/31/13

Findings presented by Mr. Jordan:

- a) Mr. Thomas Brady, Counsel for Cattaraugus County, informed CCHD that both properties have been foreclosed and will be sold in May 2014 at auction.
- b) Conditions of sale for both properties will stipulate that new owner will have 30 days from transfer to connect to the municipal sewer.
- c) Foreclosure paperwork on both properties does not allow the Respondent to pay the back taxes and reclaim the property per Cattaraugus County foreclosure guidelines.

Hearing Officer Finding: Both properties have been foreclosed and will be sold at auction in May 2014 by Cattaraugus County.

Recommendation: CCHD verify that 30 days after new ownership of both properties that the properties are connected to the municipal sewer system in compliance with the Sanitary Code of the Cattaraugus County Health District, Part 11.7.

Dave Porter said that due to new information that was just presented by Ray Jordan that he needed to further investigate and therefore requested to adjourn this docket and present at a later time.

Mr. Haberer made a motion to accept the Hearing Officer's recommendation to adjourn this docket; it was seconded by Mr. Lapey and unanimously approved.

DOCKET 13-044

PONDEROSA STEAKHOUSE, INDUS FOODS, INC., 2727 W. State Street, Olean

Violations: 10NYCRR, Section 14-1.10(b)(2) During routine inspections, potentially hazardous food items offered for service on the buffet line were found held at unacceptable temperatures in violation of 10NYCRR, Section 14-1.10(b)(2) which constitutes an imminent health hazard as defined by 10NYCRR, Section 14-1.10(a). Previous Docket #13-003. Notice of Hearing with no stipulation offered was mailed 12/12/13. It was received and signed for by M. Vanderuot (?) on 12/16/13.

Administrative Hearing:

Sr. Public Health Sanitarian: Raymond Jordan, and Eli Rust, Public Health Sanitarian appeared for CCHD and were sworn.

Respondent: Mr. Mike Jaeger, Gen. Mgr., Kelly Hurlburt, Mgr. and Roberta Black, Mgr. appeared at hearing and were sworn. Enf. 1 was read and affirmed to be correct by Mr. Rust and identified as People's Exhibit #1.

Mr. Rust gave the following testimony:

- a) Six inspections have been performed with one previous enforcement action (docket 13-003) for food being served on the buffet line that was not the correct temperature.
- b) Inspection report of 10/8/13 indicates critical items and other items that need attention and correction. (P. Ex. #2).
- c) Repeat critical items were noted upon re-inspection on 12/25/13 (P. Ex. #3) – Food being served on the buffet line is not within the acceptable limits for hot and cold food.
- d) Stipulation for docket 13-003 (P. Ex. #4) – Identical problems were observed and Respondent signed stipulation, paid civil compromise and also provided an action plan to
- e) correct violations.
- f) The stipulation and action plan (P. Ex. #4) have not been satisfactorily implemented. Violations are being repeated. Working with CCHD on what can be done to fix the problems resulting in violations (?).

Discussion among Mike Jaeger, Gen. Mgr., Mr. Rust and Mr. Jordan.

Mr. Jaeger presented the following action plan for the restaurant:

- a) During the past 6 weeks all employees went through a safety first program, then a written exam and follow-up on wrong answers was given. All employees acknowledged training.
- b) Food temperatures on the buffet line are recorded every hour and any food out of the temperature guidelines is being discarded. Pan sizes are being changed and management is creating awareness of problems and providing solutions.
- c) Ponderosa Corp. has program to help individual franchises on how to meet and control temperature guidelines of food being served on a buffet line. (Pgs. 1-12, Identified as Respondent's Exhibit #1)

Mr. Jordan stated that temperature guidelines are going to be changed in 2014. FDA and State Health will remain the same: ≤ 40 degrees Fahrenheit – cold and ≥ 135 degrees Fahrenheit – hot. Ponderosa Corp. at present requires 165 degrees Fahrenheit. They are on a six month cycle for re-inspections.

Hearing Officer Finding: Respondent is in violation of 10NYCRR, Section 14-1.10(b)(2) – Food items offered on buffet table found to be at unacceptable temperatures.

Recommendation: Allow Respondents managerial team at Ponderosa Restaurant located at West State Street in Olean, NY to put their initiatives in place to eliminate the violations being observed by Health Department inspectors. Failure to resolve the violations that constitute an imminent health hazard will result in further administrative action against Respondent.

Email from Mr. Rust to Mr. Jordan on 1/22/14 indicates that an inspection on that day of the buffet table found food to be in the acceptable temperature range. Mr. Rust noted that the managers appear to be following the plan indicated during the enforcement hearing.

Mr. Porter recommended that the last inspection has shown an improved manner but would like to keep this as an ongoing docket at this time.

Mr. Haberer made a motion to accept the Hearing Officer's request; it was seconded by Mr. Snyder and unanimously approved.

DOCKET 13-041

PORKY'S BAR, PORKY'S, LLC, 2983 Rogers Road, Hinsdale

Violations: 10NYCRR, Section 5-1.72(c)(1) Respondent failed to submit complete daily records for the operation of the non-community water supply for the month of November 2013, to CCHD by the 10th day of the following month. Previous Violations, Dockets #11-065, 12-016, 12-032 & 13-006. Notice of Hearing with no stipulation offered was mailed 12/18/13.

Administrative Hearing:

Public Health Sanitarian: Chris Covert appeared for CCHD and was sworn.

Respondent: Ms. Tricia Olmstead, VP of Porky's LLC appeared and was sworn.

Enf. 1 was read and affirmed to be correct by Ms. Covert and identified as People's Exhibit #1.

Ms. Covert gave the following testimony:

- a) Letter dated 10/19/11 (P. Ex. #2) to Respondent explaining importance and consequences if monthly water operation reports are not received in a timely manner.
- b) Contract dated 6/28/13 between Porky's LLC and Anthony Papasergi (P. Ex. #3), licensed water operator, as part of a settlement on previous violation (docket 13-006). Porky's LLC was ordered to employ a licensed water operator to comply and communicate with CCHD guidelines and personnel.
- c) The licensed operator quit Porky's LLC in August 2013.
- d) Porky's LLC filed monthly reports on time for September and October 2013. November report was due 12/10/13 and was received on 12/27/13.

Respondent gave the following testimony:

- a) Licensed water operator quit in August 2013 and Porky's LLC was left without an alternative.

Ms. Covert's conclusion:

- a) Monthly reports are due by the 10th day of the following month. Options send via fax, email, regular mail, personally drop off, etc.
- b) Porky's LLC has to employ a licensed water operator per Board Order for docket #13-006.
- c) On 1/15/14, Chris Crawford, CCHD employee will email a new contract and a list of licensed water operators for Porky's LLC to contact.
- d) Porky's LLC is now open Monday, Wednesday, Thursday, Friday and Saturday weekly.

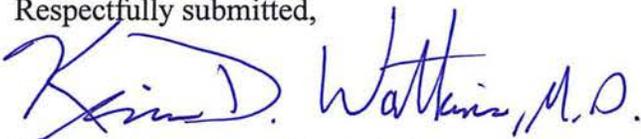
Hearing Officer Finding: Respondent is in violation of 10NYCRR, Section 5-1.72(c)(1) – Failure to submit complete daily records for the operation of the non-community water supply for the month of November 2013. This is the 6th violation in less than two years for the same violation. It is apparent that the Respondent has little or no regard for CCHD rules and regulations.

Recommendation: That Respondent pays a \$600 fine and enters into a contract with a licensed water operator to comply with and communicate with CCHD by 2/28/14. Failure to comply with both conditions will result in the loss of Porky's LLC operating permit. Porky's LLC will remain closed starting 3/1/14 until both conditions are complied with.

Mrs. Fox made a motion to accept the Hearing Officer's recommendation; it was seconded by Dr. Chohan and unanimously approved.

There being no further business to discuss, Mr. Lapey made a motion to adjourn was seconded by Dr. Chohan and carried to adjourn.

Respectfully submitted,



Kevin D. Watkins, M.D., M.P.H.
Secretary