

Tobacco Revenue, Use, Spending and Tracking Commission (TRUST)  
Bureau of Tobacco Education and Prevention Program (BTEP)

**January 29<sup>th</sup>, 2009**

ADHS Conf Rm 345a  
150 N. 18<sup>th</sup> Ave  
Phoenix, AZ 85007

***MINUTES***

**Members Present:**

Linda Bailey  
Nancy Hook  
Kelly Hsu  
Matt Madonna

Babak Nayeri  
Bill Pfeifer, Chairman  
Ronald Spark (via teleconference)

**Members Absent:**

Wil Counts  
Benton Davis  
Violet Mitchell-Enos

JR Ramirez  
Dana Russell

**ADHS Staff:**

Will Humble, ADHS Director  
Jeanette Shea-Ramirez, ADHS Asst Dir  
Wayne Tormala, ADHS BTEP  
Mary Ehlert, ADHS BTEP  
Karen Boswell, ADHS BTEP  
Gowri Shetty, ADHS BTEP

Todd Pearce, ADHS BTEP  
Ben Palmer, ADHS BTEP  
Courtney Ward, ADHS BTEP  
Brigitte DuFour ADHS Smoke-Free AZ  
Virginia Warren ADHS Chronic Disease

**Public Attendee:**

Donna Beedle – MACTUPP  
Colby Bower – ACS  
Rick Bowman ERDU  
Nancy Cohrs – ALA  
Suzanne Cooper – Yuma Co.  
Ryan DeMenna – DeMenna & Assoc.  
Rosalyn DePalo – HCP  
Jack Doyle – ADOR  
Pam Ferguson – AHA

Jill Gomez – CTFA  
Doug Hirano – APCA  
Cara Muccino – RIESTER, Inc  
Tim Vaske – AHA  
Carrie White  
Carol Whitlock – ADOC  
Megan Wohnr – IHS  
Corey Woods – ALA

**Call to Order**

Chairman Bill Pfeifer called the meeting to order at 10:05 am.

**Mr. Pfeifer tabled the motion to approve the minutes until a quorum is reached.**

## **Introductions**

Mr. Pfeifer asked the TRUST, ADHS staff and public attendees to introduce themselves with their name and affiliation ending with Will Humble, new ADHS Director. Mr. Pfeifer offered his thanks to Mr. Humble for his work with the TRUST Commission and Smoke-Free AZ over the years. Mr. Humble introduced himself and spoke briefly on the administration's decision to move forward on the Youth Prevention Campaign. He expressed praise in the quality of the ads and its message and stated it had a powerful impact on his 13 year old daughter, who is in the target demographic.

## **Smoke-Free AZ**

Mr. Humble provided the Smoke-Free Arizona report. Most businesses comply with Smoke-Free AZ. A few have claimed to not know about the law, but once informed take corrective action. A small number of businesses tend to disregard the law despite knowing they are in violation. When non-compliance occurs, documentation is key. The Attorney General's Office (AGO) will send a notice of the violation which in most cases deters the business from continuing to break the law. The AGO will broker a deal in which the business will admit guilt in lieu of paying the entire fine. 10% will be rendered. If a new complaint is registered, the remaining 90% of the fine is put into effect. With a previous admission of guilt, the business has no recourse but to pay the full balance remaining. This serves as a safeguard and deterrent. The crux of this defense hinges on potential perjury charges. The AGO may pursue criminal charges due to the guilty having signed court-sworn affidavits. No hearings are required and council fees are saved.

A current case Smoke-Free AZ has been watching is a business that was charging patrons \$5 for rolling papers/tobacco and charging \$.25 for alcoholic beverages. This is in violation of the law. The State won the case in Superior Court, but it was overturned by the Court of Appeals. The case is now being forwarded to Supreme Court. Smoke-Free AZ is confident the case will be won.

Mr. Humble has to remind staff that their success rate is phenomenal. Most States have difficulty with implementation of smoking bans because there is no mechanism in place to enforce laws and prosecute violators. Discussion occurred around the \$.02 that is used for enforcement. The discussion of the transfer of Smoke-Free AZ funds to BTEP was discussed in terms of being surprised that implementation has gone extremely well that Smoke-Free AZ feels it can safely turn over funds. This is a testament to its success.

With the arrival of Nancy Hook, a quorum was attained. Mr. Pfeifer stated entertained the notion of approving the September 2008 minutes. No changes or corrections were called for.

**Bill Pfeifer call for a motion: Matt Madonna moved for the minutes to be accepted. Linda Bailey seconded the motion. Motion passed.**

## **Illegal Trafficking**

Wayne Tormala introduced Jack Doyle, former police officer and agent for the Arizona Department of Revenue (ADOR). Mr. Doyle was asked present on the black market sales of tobacco. The presentation was in response to a request by a TRUST Commissioner at the previous meeting to discuss the topic and how it negatively affects Tobacco Tax Revenue. Mr.

Tormala referenced a handout regarding illegal trafficking in which some brief facts put together by BTEP staff. Per the handout, of note, Internet and sales on the reservation were impacting sales in other states. In New York, 1/3 of all cigarette sales are taking place on the reservations where prices are much cheaper. It is estimated that one billion dollars in revenue is lost yearly. Counterfeit cigarettes are another problem. Often the clerk does not even know they are selling counterfeit cigarettes.

Mr. Doyle presented an abridged version of the standard two hour ADOR presentation. Key points will revolve around information, compliance and enforcement. Mr. Doyle stated that “little cigars” are currently taking away taxes with counterfeit tax stamps. Little cigars are not considered cigarettes by definition because the paper containing the tobacco is not congruent. Little cigars have a slight hint of tobacco in the wrapper classifying it as a cigar. Cigars are not under the same tax stamp rule as general cigarettes. Tax stamps for cigars are charged via the “honor system” after the fact and do not have a placed stamp on the cigar package. Cigarette tax stamps are pre-charged and have a unique numbered and colored stamp. A retailer could purchase five boxes of little cigars, pay the appropriate tax on those five boxes and purchase forty-five more boxes with and not pay taxes on them, shed the invoices there by eliminating proof of ownership and thus proof of taxes that need to be rendered upon sale. The forty-five boxes are sold illegally, and the five invoiced and paid properly. Police could potentially raid the establishment, seize the non-invoiced stock but not do much else. This loop hole allows retailers to charge customers the appropriate amount and pocket the taxed funds. This is via what has been dubbed the “grey market.”

There are also issues with the tax stamp itself and the concern of taxation. Arizona is in a pocket surrounded by other States, Sovereign Nations and a County that all have either lower or no taxes on tobacco products. California, Nevada, Utah, Colorado and New Mexico all have lower taxes on tobacco. The tribes in and around Arizona are Sovereign Nations and not subject to AZ taxes and thus have much looser restrictions and lower tax rates. Mexico has no tax at all. People engage in the “buddy system” in which resources are pooled and many boxes are bought at a time outside of AZ or on reservations to avoid the taxes. This presents an interesting dilemma. If one is to carry 2000 cigarettes with a tax stamp, it is a Class 5 felony and the individual is deemed to be a seller. If the individual removes the tax stamp, they can carry up to 10,000 cigarettes without being considered a smuggler or dealer. The laws concerning possession are very unbalanced.

Counterfeit cigarettes are also a major problem. Often the clerks are not aware that they are selling fraudulent products. While cigarettes have already been proven to be harmful to ones health, they are federally mandated and regulated. Counterfeit cigarettes are not and often contain additional poisons and toxins.

Discussion occurred around next steps and what can be done to solve the problem. Mr. Doyle provided his professional opinion. He stated that a legislative review on how cigars and cigarettes were classified needs to take effect. The discrepancy between agents assigned to alcohol (25) and to tobacco (7) was also an issue. Licensing needs to occur so that if violations occur, licenses can be revoked as in liquor violations. This deterrent would be sellers, counterfeiters

and tax evaders. The issue not only affects tobacco tax recipients, but the tobacco companies themselves.

**Matt Madonna called a motion: Ask ADHS & BTEP to determine what they can do to solve the licensing of tobacco producers and reclassifying certain tobacco products as cigarettes. Linda Bailey seconded. Motion passed.**

### **Future Development of the TRUST Commission Update**

Mr. Pfeifer discussed the future development of the TRUST Commission. The Commission will remain largely intact. Mr. Pfeifer thanks Mr. Tormala for allowing the Commission to operate in this capacity as technically no Commission currently exists. This shows great insight into BTEP's desire to have the Commission remain an integral part in their advisory role. Discussion occurred around the reappointment of the Commission. The Commission will seek to be nominated by the Legislature, more specifically the President of the Senate and Speaker of the House. As long as those two appointments remain intact, the Commission will continue to function. This is a temporary solution (1 – 2 years) until the make-up of the legislature allows for a full review and reappointment.

### **Financial Report**

Karen Boswell provided the BTEP financial report. Ms. Boswell will reference three documents. A month trend line, an overall trend line and the BTEP/Chronic Disease budget with FY08 actual end figures and current FY09 figures. Ms. Boswell stated that the three documents are basic and clearly indicate that revenue is steadily declining. Ms. Boswell was quick to point out that the month of October is an anomaly due to the infusion of over \$700,000 rolled into BTEP from Smoke-Free AZ. A question was posed regarding the current federally proposed tobacco tax and how it would affect revenues. This was not reviewed and no conclusion could be reached at this time.

Dr. Ronald Spark asked a question concerning the carry-forward monies and why they were exceedingly high. Ms. Boswell stated that these funds are currently being spent down. Mr. Pfeifer stated that once the carry-forward is depleted, BTEP will have fewer dollars. It will need to become more aggressive or increase the excise tax or see a continual decline. Ms. Boswell stated that with respect to the Chronic Disease funds, it is likely to decrease a lot faster. BTEP is spending more than it has in order to draw it down.

The Smoke-Free AZ monies were not allocated like originally intended. They were used to keep the agency afloat. Mr. Pfeifer expressed his excitement that Smoke-Free AZ was able to make such a large transfer so quickly. He believed it would be three to five years before a transfer of that size were to occur.

### **Request for Grant Applications Status Report**

Ms. Boswell stated that Phase 1 of the Requests for Grant Applications (RFGAs) were awarded to Inter Tribal Council of AZ, Inc. and Black Hills Center for American Indian Health for tribal populations and Asian Pacific Community in Action, Campesinos Sin Fronteras, Concilio Latino de Salud, Inc., Prescott Pride Center, Tanner Community Development Corporation and the Worthy Institute for priority populations. Dr. Babak Nayeri commended the selections in terms

of diversity and asked a question regarding how the grants are to be evaluated. Ms. Boswell stated that they will be performance based. This was welcomed news to many Commissioners. Dr. Nayeri also asked a question regarding ITCA and administrative costs. It was stated that this was taken into account and reduced significantly. The contracts have a 48 month lifespan contingent upon a renewable clause that may or may not be exercised depending on the output.

Discussion occurred surrounding the tribal population grants. Dr. Nayeri asked about Phoenix Indian Health Services and if they would be involved because they were not part of ITCA. It was explained that as a part of the RFGA process, partnerships were encouraged and that Phoenix Indian Health Services was included under the umbrella of ITCA. In light of discussions of lost revenue on the tribe, Matt Madonna felt any award in the future should include special language.

**Matt Madonna called for a motion: Ask the future Tobacco Tax Grants provided to any Native American groups (Sovereign Nations) which generate tobacco revenue, be leveraged as matching grants. Babak Nayeri seconded.** Dr. Spark raised concerns about the motion being too overbearing. Dr. Spark voted 'nay.' **Motion Passed.**

### **Health Services Agency update**

Mr. Tormala provided a brief update regarding two of the handouts. The first was in reference to the Economic Stimulus package handout. Increase in funding for tobacco related causes as well as Chronic Disease related issues are being funded. Linda Bailey asked how many jobs would be generated. She stated that if advocacy was a goal, facts sheets could be provided.

The second update is concerning SCR 1009 which aims to use voter protected funds to help aid in the cost of balancing a deficit. Advocacy groups are encouraged to spread the word regarding SCR 1009. There will be a lot of willing groups to fight to protect voter protected funds.

Four public attendees were asked to provide updates and information regarding the above. Tim Vaske stated that a strong coalition had formed and was already in place on behalf of the voter protected funds. They identified flaws that would help derail the bill. No action could be taken before May thus relegating the bill to the general election of 2010. For it to continue, it would need 2/3 majority. Corey Woods stated that it was important to alert elected officials and make them aware that the bill seeks to take away the people's rights via back door methods. Colby Bower stated that the same bill was dropped last year. This is likely a show to provide proof that they are working on solutions. This is not a high alert; we will monitor though and keep everyone informed. Jill Gomez stated that CTFA is exciting and moving back into coalition form. Perhaps this could be an avenue of interest for CTFA to peruse.

Jeanette Shea-Ramirez provided a brief budgetary update for the entire agency. A meeting was held the previous night to discuss the budget. They have offered to reduce figures from \$39 million to \$36 million. They would like to do it all as a lump sum cut so the Health Dept. could make the final cuts where they deem necessary. BTEP would not be affected by the budgetary issues, but will be looking to stay inline with the rest of the agency. Will Humble will be looking at ways to reorganize and streamline programs without cutting positions. It is difficult to hire and train a public health staff.

**Meeting adjourned for lunch at 12:17pm. Meeting resumed at 12:36pm**

### **Marketing Campaigns Update**

Mary Ehlert provided the marketing update. As stated by Mr. Humble, the green light has been given to go ahead with the much anticipated Youth Prevention Campaign. Presentations have been given to the Governor's Office and they are on board as well. It is important to remember that the campaign was conceived under the direction of research based evidence. BTEP used data from thirty-nine community forums and twenty-six focus groups. The common theme among all participants was that media was important; the message needed to get out to the people and surprisingly, the "Smelly Puking Habit" campaign of the late 1990's was still remembered. This is evident that the State needed to return to an aggressive marketing campaign. BTEP has partnered with RIESTER, the creators of the "Smelly Puking Habit" campaign to return to that style. The Youth Prevention Campaign will consist of TV spots that drive the user to a website, so it is important that all aspects of the campaign are launched and supported in the fashion that they were intended. The website has been created to help simulate the "loss of control" when navigating it. The projected demographic for the campaign is 12-17 year olds. It is important to remember that the targeted demographic helped co-create and design the creative elements. The ideal event to launch the campaign would be at a teen event.

The three TV spots will be shown once and re-shown again. Feedback was asked for by RIESTER staff. The website will also be previewed. At this time the three Youth Prevention Campaign TV spots shown. The overall response was positive. Feedback provided from Dr. Nayeri centered on the confusion of the phrase, "Control, brought to you by Addiction." Dr. Nayeri stated that to be less confusing would be to state, "Loss of Control" as opposed to "Control." The comment was noted. The website could not be shown due to an ADHS firewall.

Ms. Ehlert briefly discussed the 2009 National Conference on Tobacco or Health (NCTOH) mentioned the dates and encouraging people to attend. Registration has already begun. Ms. Ehlert also briefly discussed "Through with Chew Week" which is coming up in March. Schools have been provided with "toolkits" that they may provide during the week to increase awareness. Earned media was also briefly discussed. Ms. Ehlert stated that Stephen Michael, ASHLine Director, has been a great spokesman the past few months in his many media interviews. A brief demonstration on the new website, TobaccoFREEArizona.com was provided. Ms. Ehlert demonstrated the different features, highlights and potential uses for the website.

### **Chronic Disease planning update**

Mr. Tormala provided the Chronic Disease update. There have been meetings to discuss the assessment of people engaged in areas working with Chronic Disease funds. The determination of where monies are best spent is key. Upcoming meeting will provide further insight and deliberation to what the next steps will be.

### **CDC Integrated Grant Application**

Gowri Shetty provided an update on the CDC Integrated Grant Application. She stated that there was a call for a proposal in March that sought a \$2.1 million increase in sample leverage monies. A question was asked regarding putting FOA into OSH. Ms. Shetty will review. It would be a

proposed joint project with a focus on disparity groups. Dr. Spark stated that this would allow for them to gain what they could not currently do.

### **Program Updates**

Gowri Shetty provided an update on the new ASHLine web launch of the WebQuit application. The website is nearly ready for launch. It can be accessed now and accounts can be setup. Ms. Shetty encouraged the Commission to create an account, sign-in and go through the website periodically as if they were actual smokers. Feedback would be greatly be appreciated. Ms. Shetty then proceeded to give a live demonstration of the website and its features. She had previously created an account and proceeded to log into it. Some of the features include chatting online with a coach and creating a unique plan. Users will be drawn to the website via TobaccoFREEArizona.com and the ASHLine.org homepage.

Ms. Shetty provided an update on the NRT Pilot program. During March, April and into May. 2,015 calls were received and there was a 51% response to all 2,015 follow-up calls. There is no sample; all users were contacted up to 10 times. 51% is a phenomenal follow-up rate. BTEP looks forward to analyzing the data from the 3-month, 6-month and 1-year follow-up. With such a high usage of Chantix, it may be difficult to infer whether other products, especially those with lower usage rates, are any more or less successful. The numbers will be too skewed and thus cannot do a study of the statistical significance of quit rates.

Ms. Shetty continued her report on NRT with a focus on the AHCCCS NRT Program. This is a partnership that began on October 1<sup>st</sup> with AHCCCS clients qualifying for free NRT. While they cannot be required to call the quitline, they will be strongly encouraged to. All clients are eligible to receive the free NRT benefit for 12 weeks.

### **Public Commentary**

There was one (1) public comment from Rosalyn DePalo. Ms. DePalo wanted to bring attention to the QUITZones recently presented QUITZone certificate to the Phoenix Indian Medical Center (PIMC) on Great American Smoke-Out, Nov 20<sup>th</sup>. One will also be provided to the Arizona State Hospital (ASH) during the first quarter of 2009.

### **Adjourn**

**The meeting was adjourned at 2:10 pm.**

The TRUST Commission is a public meeting. In compliance with the State of Arizona's open meetings laws, the recorded minutes for the January 2009 TRUST Commission meeting are available to the public three working days after the meeting. Please contact the TRUST Coordinator at the Bureau of Tobacco Education and Prevention Program, 602-364-0824, to make arrangements to obtain the minutes.