

**BRAINTREE BOARD OF HEALTH**

**MINUTES**

**September 15, 2016**

**IN ATTENDANCE:** Dr. Arthur Bregoli, Chairman  
Dr. Philip Nedelman, Vice-Chairman

**ALSO PRESENT:** Marybeth McGrath, Director of ML & I  
Jerry McLaughlin, Tobacco Compliance Officer

Dr. Bregoli called the meeting to order at 7:00 pm.

**MINUTES:**

**Motion By:** Dr. Nedelman to approve the meeting minutes of August 18, 2016.  
**Second By:** Dr. Bregoli

**NEW BUSINESS:**

**1. Sale of nicotine delivery product violation: The Art of Vaping-250 Granite Street # 90**  
Present: Frieda Rose, Owner/Operator of the Art of Vaping

Mr. McLaughlin advised the Board that during the week of August 15, 2016, nicotine delivery product compliance checks were conducted in the town of Braintree. On Friday August 19, 2016 at 11:00am, an eighteen year old entered the South Shore Plaza and went directly to the Art of Vaping kiosk. At that time, the minor asked for e-liquid, commonly called juice. The minor was asked during the conversation, the nicotine level that she wished to purchase. At no time, during the transaction was the minor asked for any identification or for her date of birth or age. The minor did purchase a nicotine product for \$ 25.00. The minor did enter the South Shore Plaza with Mr. McLaughlin, with no identification or monies on her, except for the money that Mr. McLaughlin gave her. Mr. McLaughlin delivered the purchased nicotine delivery product evidence to Ms. McGrath, who brought the evidence to the Board meeting tonight.

Ms. Rose asked if a receipt was provided during the sale.

Mr. McLaughlin advised that no receipt was provided.

Ms. Rose examined the nicotine delivery product evidence, and advised that it is e-liquid.

Dr. Nedelman asked her what the active ingredients are.

Ms. Rose advised vegetable glycerin, propylene glycol, flavoring abstract, nicotine and flavoring abstract.

Dr. Nedelman asked Ms. Rose if the product contained nicotine.

Ms. Rose advised that she would say yes because of the color. She advised having worked in the business the past few years that generally the clearer the liquid then it has zero nicotine, and the darker the color that nicotine has been added to it.

She advised that this product is sold as e-liquid that people use for tankomizers. The tankomizer is what the e-liquid is put in and creates the vapor.

Mr. McLaughlin advised the Board that the Board can buy e-liquid without nicotine. He further advised that the e-liquid evidence that was purchased by the minor buyer does have nicotine in it, and is listed on the bottle as containing nicotine. Mr. McLaughlin further advised that he verified the nicotine by going to the manufacturer's website.

Ms. Rose advised that she was confused because no one ever buys a product without getting a receipt. She said having run a business there for the past seven years that they have done their due diligence to be in compliance. She said she has no idea if this person bought the product there because there is no receipt.

Mr. McLaughlin advised that he witnessed the transaction. He witnessed the minor buyer giving the money to the gentleman, he witnessed the gentleman taking the product and putting it into the bag, and the minor buyer coming directly to Mr. McLaughlin and handing him the bag.

Dr. Nedelman asked Ms. Rose if the sales person card the individual and establish the person's age.

Ms. Rose said that she was not there, so she does not know. But, their procedure at that kiosk is that they are required to card anyone that looks under the age of thirty. That is her rule. Legally, they know that they have to be twenty-one in Braintree.

Ms. McGrath advised Ms. Rose that when this sale was brought to her attention, she was very concerned because Ms. Rose and she had a conversation not more than two and a half months ago about a complaint that the department received from a parent saying that people were being allowed to purchase product under the age of twenty-one at this kiosk. So, she was very surprised that this sale occurred.

Ms. Rose advised that she was shocked too. She said the reason that she has been able to stay in this business is because she always does the right thing. She has ridden the wave of this business with changes in regulations that increased the age to purchase, and has always been in compliance. She advised that when Ms. McGrath and she spoke two and a half months or so ago, she didn't know what had happened because they were running two locations. The one in Wrentham requires no sales to anyone under 18 years of age, and Braintree is twenty-one.

Ms. McGrath advised that she did not see a violation occur when she conducted the complaint inspection because no purchases were made when she was onsite speaking with the employee.

But, she advised that is beside the point, the compliance officer was with the minor buyer that works for the Board of Health and a compliance check was conducted and the sale occurred. The Board is very strict about the regulation.

Ms. Rose apologized profusely because she would never have allowed anything like that happen.

Ms. McGrath asked Ms. Rose when she is at the kiosk.

Ms. Rose advised that she is usually at the kiosk in the morning and each night, and she is there three days a week. She also works in the city. The rents are so high in these malls that she has always kept more than one job. She advised that she can't take the blame because she wasn't there, and everyone who knows her from the mall management to longtime customers, knows that she always does the right thing.

Ms. McGrath advised that as the permit holder, she is the responsible party.

Mr. McLaughlin advised that he did witness this particular transaction. He did eyeball the clerk and he did see the transaction.

Mr. McLaughlin explained to the Board and Ms. Rose, the protocol and procedures that the minor buyer must follow when conducting compliance checks.

Dr. Nedelman stated that Mr. McLaughlin does not have to explain or defend the protocol. He advised that the issue is that the person who purchased the product was not asked for their age, was not carded. That is the whole issue that is in front of the Board right now.

Dr. Bregoli also stated that the issue is also that the product was sold to someone under 21 years of age.

Ms. McGrath advised the Board that if they impose the penalty, then this is the first offense for this establishment. The first offense penalty is a five day suspension of the nicotine delivery product permit, a one hundred dollar fine, and within thirty days of the first day of the suspension all establishment employees must receive merchant education training.

Ms. McGrath advised that as far as the kiosk, all products containing nicotine would need to be removed from the kiosk display and secured.

Ms. Rose advised that there are locked cabinets under the kiosk where the nicotine products could be secured.

Dr. Nedelman asked how many employees she has.

Ms. Rose advised one fulltime employee, two part-time employees and herself.

Ms. McGrath advised that the department would spot check the kiosk over the five day period if the penalty is imposed to make sure that no nicotine products are sold.

**Motion By:** Dr. Nedelman to impose the penalty for a first offense effective Friday September 16, 2016 at 12:00pm.

**Second By:** Dr. Bregoli

Ms. Rose advised the Board that she will be reviewing her schedules to see which employee was working at the time of the sale.

**2. Review of draft letter RE: Registered Marijuana Dispensing Sites (RMD's)**

The Board reviewed and signed the Registered Marijuana Dispensing Site letter opposing any such sites in Braintree, and asked that Ms. McGrath forward it to Mayor Sullivan.

**Motion By:** Dr. Nedelman to approve the draft Registered Marijuana Dispensing Site letter that will be forwarded to Mayor Sullivan.

**Second By:** Dr. Bregoli

**INFORMATION:**

**3. Review of RMD regulations from other MA communities**

Ms. McGrath advised the Board that she was able to find information about the 7 MDPH approved and licensed RMD sites in Massachusetts. She was also able to find information on 175 pending applications before the MDPH for RMD's. These sites would be for medicinal marijuana.

She also advised that question # 4 that will be on the Presidential election ballot is for the Legalization of Marijuana for Recreational Purposes.

Dr. Nedelman asked if the Board of Health would be involved in the MDPH approval of these RMD's.

Ms. McGrath advised that as part of the RMD approval process, the applicant must obtain a letter of support from executive body of the community that they want to site in.

Dr. Nedelman asked if someone wants to come into Braintree to establish a medical marijuana dispensing site, would the local board of health be notified that the application was made, or could the Town Council vote in favor of it without the knowledge of the board of health.

Ms. McGrath advised the Board that Mayor Sullivan has had at least two inquiries of people that would like to site locations in Braintree. One of them is a property owner that has had clients come to him to lease his property for such a site. The property owner was good enough to come to the Mayor to see what the position of the Town was before he even entered into a letter of agreement. There is interest in Braintree. Mayor Sullivan took the information under advisement. He did not weigh in on it one way or the other.

Dr. Nedelman asked if it ever came to a point that the Town had to make a recommendation, who would do that.

Ms. McGrath advised that she would guess it would be the Mayor and also the Town Council. She also advised that Mayor Sullivan has included her in on these discussions so far, so she feels confident that she would be notified and in turn the Board of Health.

Ms. McGrath advised, although it is her opinion, she feels that the letter the Board is sending to the Mayor in opposition to registered marijuana dispensing sites in general in Braintree, would weigh heavily on a decision due to their medical expertise and certification.

Ms. McGrath advised that she attempting to start draft regulations for RMD's. However, Mayor Sullivan does not want any retail component to a registered marijuana dispensing site regulation. However, she needs to see what happens with the Ballot question # 4 in November because if it passes then retail sales will become legal in Massachusetts.

Dr. Nedelman asked if the Health Department is notified if a physician in the community is certified to write a prescription for medical marijuana.

Ms. McGrath advised that the state health department is notified, but the local health department is not notified.

Dr. Bregoli advised that may be changing in the future.

Dr. Nedelman asked how many establishments in town sell nicotine delivery products.

Ms. McGrath advised that most retail vendors sell them along with cigarettes. She will ask Mr. McLaughlin to focus the next compliance check on the e-cigarette component.

Ms. McGrath advised that she will make contact with the Town Solicitor regarding putting a marijuana regulation together, whether or not it should wait until after the November 8<sup>th</sup> election results and how to proceed.

#### **OTHER BUSINESS:**

Ms. McGrath advised the Board that the department is awaiting receipt of the flu vaccine, which is expected within the next week. Once received the flu clinic dates will be scheduled, which will hopefully be in early October. She advised that she will keep the Board posted on the status of the clinic.

**Motion By:** Dr. Nedelman to adjourn the meeting at 7:40 pm.  
**Second By:** Dr. Bregoli