

BRAINTREE BOARD OF HEALTH

MINUTES

October 18, 2007

IN ATTENDANCE: Paula Dowd, Chairman
Dr. Philip Nedelman, Vice Chairman
Dr. Mark Samuelson, Clerk

ALSO PRESENT: Marybeth McGrath, Executive Health Officer

Mrs. Dowd called the meeting to order at 7:00pm.

MINUTES:

Motion By: Dr. Nedelman to approve the minutes of September 13, 2007.

Second By: Dr. Samuelson
Unanimously Voted

OLD BUSINESS:

NEW BUSINESS:

1. Sale of Tobacco Violations:

Present: Elizabeth Nee, Director and Jerry McLaughlin, Enforcement Officer
So. Shore Boards of Health Collaborative, Tobacco Control Program

a. Highland Market-1719 Washington Street

Present: Thang Le, Owner

Mr. McLaughlin advised the Board that on September 8, 2007 at approximately 12:13pm a routine compliance check was conducted at Highland Market at 1719 Washington Street. At that time, a seventeen year old female exited his vehicle and went directly into the Highland Market to conduct a compliance check which is trying to purchase a tobacco product. She left his vehicle with no ID or monies, except the money given to her by the Collaborative by Mr. McLaughlin. She entered the establishment under his observation and a few minutes later returned with a pack of Newport cigarettes, which was given to him, properly tagged and held as evidence. The price was \$ 5.25. During the transaction, the purchaser was not asked for an ID, nor was she asked for her age.

Mr. Le advised the Board that when he found out there had been a tobacco sale he determined that his uncle was the clerk on duty at the time of the sale. Mr. Le advised the Board that the sale most likely did occur and he accepts responsibility for it.

Dr. Samuelson asked Mr. Le if his uncle still works there and that the Board asks that he educate the employees.

Mr. Le advised yes. He further advised that he told his uncle to check everyone because sometimes the kids give him a hard time, and if he has to call the police.

Mrs. Dowd advised that this very serious as it is the second sale within a two-year period.

Ms. McGrath advised the Board that the previous sale occurred on September 23, 2006. The penalty for a second offense is a ten-day suspension of the tobacco sales permit and a fine of three hundred dollars.

Mr. Le asked the Board for leniency, as tobacco is the biggest sale at their location. A ten-day violation will not help his business. He asked if the Board could fine him more and give him a shorter penalty in days.

Ms. McGrath advised that the regulations do not provide for a variance of the penalty.

Dr. Nedelman asked what the penalties would be for the third and fourth offenses.

Ms. McGrath advised that the penalty for a third offense is a thirty-day suspension of the tobacco sales permit and a five hundred dollar fine, and the fourth offense would be a one-year revocation of the license.

Motion By: Dr. Samuelson to uphold the penalty for a second offense to begin on Friday October 19, 2007 at 12:00pm.

Second By: Dr. Nedelman

Unanimously Voted

b. Braintree Market & Deli -978 Liberty Street

Present: Ramila Patel, Owner

Mr. McLaughlin advised the Board that on September 8, 2007 at approximately 12:00pm, a routine compliance check was conducted at Braintree Market and Deli at 978 Liberty Street. At that time, a seventeen year old female exited his vehicle and enter the premises to conduct a compliance check, which is to see if she can purchase a tobacco product. She left his vehicle with no monies or ID on her, except the money provided by the Collaborative by him. She entered the premises and within one to two minutes returned to his vehicle, which was parked outside with a pack of Marlboro's. He properly marked the cigarettes, which was held by him as evidence. The price of the cigarettes was \$ 5.45. At the time of the transaction, the clerk did not ask the buyer for an ID, nor did he ask for her age.

Ms. Patel advised the Board that they are sorry that this happened. They have been there for eight years and this is the first time this has happened in eight years. She will make sure with her employees that this does not happen again.

Ms. McGrath advised the Board that this is the first offense and the penalty for a first offense is a five-day suspension of the tobacco sales permit, a one hundred dollar fine, and within thirty days of the first day of the suspension all employees involved in tobacco sales must seek merchant education.

Ms. McGrath advised Ms. Pater that the Collaborative can help her with merchant education.

Motion By: Dr. Nedelman to implement the penalty for a first offense to begin on Friday October 19, 2007 at 12:00pm.

Second By: Dr. Samuelson
Unanimously Voted

c. Hennessy News- 250 Granite Street, Suite # 157

Present: Jason McGaughey, Manager of Family Owned Business
Gene Santorelli, employee

Mr. McLaughlin advised the Board that on September 8, 2007 at approximately 1:54pm, which is the time when the person came back to his vehicle from the store, a routine compliance check was conducted at Hennessy News at 250 Granite Street, Braintree, MA which is at the South Shore Plaza. At that time, a seventeen year old female entered the Plaza for the purpose of conducting a routine compliance check at this establishment, which is to try to purchase a tobacco product. She left his vehicle with no ID or monies, except money provided to her by the Collaborative. At approximately 1:54 pm, she returned to his vehicle with the pack of Newport cigarettes, which was properly tagged and held by him. At the time of the purchase, the clerk did not ask for an ID nor her age. The clerk was on the phone at the time of the transaction. The sale was made for \$ 5.15.

Mr. McGaughey advised the Board that his father and brother own this family business. He advised that he is here with Gene Santorelli, an employee of the store. Mr. Santorelli works at the store six days a week and was there at the time of the transaction. Mr. McGaughey advised that he received a certified letter dated September 12, 2007, and the transaction took place on September 8, 2007. They have a set of security cameras on the store premises. He immediately wanted to find out who was working and who performed the transaction. He called Sean Collins at the Health Department to get the time of the transaction. They have two registers at the store, so he reviewed the video and went back between 1:00-3:00 pm on that date. He has watched it dozens of times along with Gene Santorelli to find out who performed the transaction, what happened, what it was and it is not visible on the camera. He has the video here this evening to show to the Board and would appreciate it if they would look at it. He feels uncomfortable placing a disciplinary action against an employee, who he didn't see do it.

Mr. Santorelli advised the Board that they take this very seriously and they try for 100%. They ask them for ID. They have right in front of the register the year minimum that they can have. They are always checking ID's. They honestly don't see it on the camera. They would like to know how it happened and they need fix it.

Dr. Samuelson asked Mr. Santorelli if they have the right place, the same store.

Mr. Santorelli advised yes, they are the only Hennessy News at the South Shore Plaza.

Dr. Samuelson asked how many employees they had that day.

Mr. McGaughey advised that during the whole day, four to five. At the time of the transaction, two people.

Mr. Santorelli advised they had a new girl on that day, so it is possible. They did ask her. They can't see it on the video where it is not being asked for.

Dr. Nedelman asked how many checkouts there are and if there is video on all of the checkouts.

Mr. McGaughey advised two checkouts, and Mr. Santorelli advised yes there is video on all of them.

Dr. Nedelman asked if there is any question as far as the time.

Mr. McLaughlin advised that the time is the time that she comes back to the vehicle. The time she leaves the vehicle, walks into it, finds the establishment where she knows where it is and returns to the vehicle could be a five, six, seven minutes differential on it.

Dr. Nedelman asked Mr. McLaughlin if he watched the video then he could see the individual.

Mr. McLaughlin said yes, but he must inform the Board that videos are not considered proof because they are not under their jurisdiction and videos can be sliced, diced, edited. He further advised Mr. McGaughey and Mr. Santorelli that he is not questioning their integrity or honesty, but as an enforcement officer he must bring this to the Boards attention.

Mr. McLaughlin asked Mr. McGaughey and Mr. Santorelli if the price of their cigarettes is \$ 5.15.

Mr. McGaughey advised for a pack of Newport's, yes.

Mr. McGaughey advised that on the day he received the letter, he called the Health Department and the Collaborative to see if there is any way to get someone down to his

establishment at that time to watch the video, and then he was told by various people that his best bet was to wait until the hearing. Mr. McGaughey stated that was the first thing he thought is when he gets to the hearing, and he knows that the Board is not accusing him but that does happen that videos are sliced and diced. But, he did call on that day and asked Ms. Nee to attest to it, which she did.

Dr. Nedelman advised that he understands that tapes can be edited, but if Mr. McLaughlin see this girl on the tape that would more or less prove. Dr. Nedelman further advised that the thing that disturbs him is that this is the first time that someone has offered a video.

Ms. McGrath advised Mr. McGaughey that the certified green card signature indicates that he received the letter on the 14th of September, and it appears to be his signature.

Mr. McGaughey stated yes.

Ms. McGrath advised that she recollects Mr. McGaughey calling and speaking with Sean Collins, one of the department inspectors, and she recollects him asking Mr. Collins for someone from the office to go down there. Ms. McGrath advised that it would not be the department staff's determination to look at a video, it would be brought before the Board for the hearing which is what was relayed to Mr. McGaughey. Further, the department does not have access to a photograph of the youth buyer, so we would not know what the individual looked like.

Mr. McGaughey advised that he did not know how to handle it and that is why he called.

Mrs. Dowd asked if on the camera, they can actually see when people show their licenses.

Mr. McGaughey stated yes. He also provided information to the Board about a different transaction that he saw on the video at 1:49pm on that date.

Dr. Samuelson asked if they do a video everyday when they open the store.

Mr. McGaughey advised that the video is run twenty four hours a day, seven days a week.

Dr. Samuelson asked how long they keep the tapes.

Mr. McGaughey advised that for example today's video will be saved for two weeks and then it dumps it. Once this all happened, they saved it because they did not want to lose it.

Dr. Samuelson advised that with some of these videos that are computerized timing, the time is off, the date is off. He asked Mr. McGaughey if he reviewed this date to verify that it is in fact that day, and are the employees there.

Mr. McGaughey advised that the video is consistent with real time. The time is stamped on the video but it may be off.

Dr. Samuelson advised that before they can consider even looking at the video, they would want some validation that it was in fact the day. He requested a list of employees that were there on that day, the time they came in and out.

Dr. Samuelson asked if they had a cash register receipt for that day that could tell if there were any sales of tobacco around that time.

Mr. McGaughey said that he believed there is. He advised that he had not looked at the register tape.

Dr. Samuelson advised that they would also want to look at the register tapes for that day.

Mr. McLaughlin advised that no receipt was given to the buyer. The only establishments that are mandated by their own company policy to give receipts is CVS.

Dr. Nedelman advised that Mr. McLaughlin could look at the tape and see the buyer.

Ms. McGrath advised that the question is whether or not the Board will entertain looking at the tape.

Dr. Samuelson advised that he would only entertain looking at the video with a log of who was in and out that day, what time they came in and out for employment, some sort of validation that they were in and out that day and the cash register receipts with them.

Mr. McLaughlin advised that he did ask Mr. McGaughey the price of the cigarettes, which Mr. McGaughey provided, and there are only two places at the South Shore Plaza that sell cigarettes that is CVS and Hennessy News.

Mr. McLaughlin further advised that if the Board does decide to look at the video, Mr. McLaughlin cannot identify the buyer because she is a minor. He will be able to tell the Board whether she is there or not there based on the evidence presented, but again video tapes are not considered full proof due to the fact that they can be edited.

The Board further discussed whether or not to entertain viewing the video tape.

Mr. Santorelli advised that they can leave the video with the Board and bring back the additional information requested.

Ms. McGrath advised that she does not feel comfortable receiving a tape that the Board will be making a decision on as far as a penalty, between now and the next Board meeting if the Board chooses to table this item to the next meeting because there is a chain of custody factor.

Dr. Samuelson suggested that Mr. McGaughey review his register receipts and the Board can table the matter until November.

Dr. Samuelson suggested that Mr. McGaughey take the video back, this item will be tabled until the November meeting at which time the Board will have Town Counsel present. He requested Mr. McGaughey bring the time logs of employees on that date, the cash register receipts and the video with him.

Motion By: Dr. Samuelson to table this item until the November Meeting.

Second By: Dr. Nedelman
Unanimously Voted

d. CVS # 1297-270 Grove Street

Present: Brian Leonard, Acting District Manager-CVS

Mr. McLaughlin advised the Board that on September 7, 2007 at approximately 5:25pm, a routine compliance check was conducted. At that time a seventeen year old female exited his vehicle and went into CVS to conduct a compliance check which is to try and purchase a tobacco product. The buyer left his vehicle with no ID and no monies except the monies given to her by the Collaborative by him. A few minutes later she returned to his vehicle. At that time she had a pack of cigarettes that was given to him and properly tagged as evidence. It was a pack of Newport for \$ 5.08. At the time of the transaction the clerk asked for an ID and the buyer said she did not have one, and the clerk said okay. The clerk did not ask her age and the transaction was conducted.

Mr. Brian Leonard, Acting District Manager advised the Board that the manager for that store has since given her resignation so she is not here to defend the store. He advised that it is a privelege that they are able to sell tobacco and they take that very seriously. Further, Mr. Leonard explained the employee education requirements of CVS.

Mr. Leonard explained that for the sale of a tobacco product the computer will not operate further until an age is input, so the clerk overrode their policy to put the actual age from the ID into the register before they could proceed with the sale. He is not disputing that it happened, he is sure it did happen but CVS takes it very seriously. The result could be termination of that person.

Mr. Leonard advised that he would like to know who the employee was.

Mr. McLaughlin advised that he has a receipt and provided the register, cashier and transaction numbers to Mr. Leonard.

Ms. McGrath advised Mr. Leonard about the description of the clerk as indicated on the compliance check form.

Ms. McGrath advised the Board that this is the first offense and the penalty for a first offense is a five-day suspension of the tobacco sales permit, a one hundred dollar fine, and within thirty days of the first day of the suspension all employees involved in tobacco sales must seek merchant education.

Motion By: Dr. Samuelson to implement the first offense starting at 12:00 pm on Friday October 19, 2007.
Second By: Dr. Nedelman
Unanimously Voted

**2. Request for Variance of Well Regulations- (Roadway Setback)
-Patricia O'Connor- 169 Cedar Street**

Ms. McGrath advised the Board that Patricia O'Connor would like to install an irrigation well, and is requesting a variance of the well regulations for the roadway setback.

Ms. O'Connor is only able to make a roadway setback of 32' instead of the required 100'.

Ms. Carey, a department inspector has conducted a site inspection and foresees no concerns with issuing the variance.

Ms. McGrath recommends approval of the variance requested.

Motion By: Dr. Nedelman to approve the request for variance.
Second By: Dr. Samuelson
Unanimously Voted

**3. Request for Variance of State Plumbing Code-
Origins- 250 Granite Street (South Shore Plaza)
Present: Jack Esterkes, Hirsch Construction Corp.**

Ms. McGrath advised the Board that Origins located at the South Shore Plaza, is a retail establishment that sells mostly skin care products and minor tea products. They are considering a complete renovation in the establishment. At present, they have an employee restroom in the back room.

Ms. McGrath reviewed the submitted plan with the Board showing the existing restroom and proposed restroom.

Ms. McGrath advised the Board that the State Plumbing Code requirement is that if they remodel or there is any substantial renovation change on the premise, and if the property is over 1200 square feet and over 300 feet to the public restroom then they are required to put in two handicapped accessible restrooms. The variance request is to install one handicapped accessible unisex restroom. So, in order for the applicant to be able to go to the State Plumbing Board to seek this variance, which they are the ones that make the

determination on whether the variance is approved, the requirement per the application is that the applicant come before the local Board of Health where this request is being made and they seek an endorsement either for or not for the variance request. Thereafter, based on the Board's determination, a letter would be prepared on the Board's behalf and forwarded with the application to the State Plumbing Board. The Board is not approving or disapproving it, but simply endorsing the proposed request or not.

Ms. McGrath also advised that a letter accompanying the application indicated that the applicant spoke with Mr. Galewski, the Inspector of Buildings. Ms. McGrath advised that she has not had the opportunity to speak with Mr. Galewski because he has been on a leave of absence since on/about October 1, 2007. However, she has had the opportunity to speak with Andy Lyne, the Plumbing Inspector, who is the individual who would enforce the State Plumbing Code. He has advised that based on the paperwork that he has received, the project is over 1200 square feet and is in excess of 300 feet to a public restroom and he would be recommending to the State Plumbing Board that two restrooms be required.

Mr. Esterkes advised the Board that they are increasing the footprint of the store from less than 1200 square feet to 1350 square feet, and is somewhat beyond the 300 foot threshold to the nearest public accessible lavatories, which would be the food court area.

Dr. Nedelman asked how many square feet a handicapped bathroom requires.

Mr. Esterkes advised approximately 50 square feet, and he advised that if two restrooms were required they would have to devote for them approximately 8 to 9 % of the total square footage of the entire store.

Mr. Esterkes advised further that if the footprint of the store stayed the same square footage then only one handicapped accessible restroom would be required.

Dr. Nedelman advised that he would endorse the request because it is unreasonable to take up a third of the square footage.

Ms. McGrath advised that currently the restroom is for employees only, and the change will be that they are opening up use of the restroom to the public, which they are choosing to do. Thus, there will be a greater demand of use of the restroom.

Dr. Samuelson advised that he is trying to be reasonable in this matter.

Mr. Esterkes advised that he spoke with Mr. Galewski previously about this request.

Motion By: Dr. Samuelson to endorse the variance request.
Second By: Dr. Nedelman
Unanimously Voted

4. Chair Massage License Request (P & B Services)- South Shore Plaza

Present: David Ma, P & B Services, Inc.

Ms. McGrath advised the Board that she is bring this request forward to the Board for their help interpreting the regulation because she is unclear if the regulations allow for chair massage. Specifically, the regulations require the establishment having its own room for massage to be practiced in, accessibility to a handsink for employees to wash hands, accessibility to a sink to properly wash and sanitize equipment, properly lighting, a door on the treatment room.

Ms. McGrath further advised that Mr. Ma would like to set up a chair massage establishment in the common area in inside the South Shore Plaza in front of Sears.

Dr. Nedelman advised that he would be willing to give a variance for this type of thing, but that it is still massage and falls under the regulation requirement for therapist certification.

Mrs. Dowd asked where the employees would wash their hands.

Mr. Ma advised the closest public restroom.

Dr. Samuelson asked Mr. Ma to explain the massage itself.

Mr. Ma advised that it is a massage chair, and showed the Board a picture of the chair. He further advised that he has an agreement already with the Plaza. The massage price would be between \$ 10.00 to \$ 20.00. He would like to have three massage chairs. They would massage the back, shoulder, arms, neck and head. The client is fully clothed when they receive the massage, and must be at least 18 years of age. If the person is under 18 years of age, the parent must be present.

Ms. McGrath advised Mr. Ma that the Board of Health Massage regulations are very clear about the requirements for clients under the age of 18.

Mrs. Dowd asked if this is offered at other malls.

Mr. Ma advised that they have it at Square One Mall in Saugus and the Burlington Mall.

Dr. Nedelman asked if there would be a curtain surrounding the massage chair.

Mr. Ma advised no.

Dr. Nedelman asked if people will be able to watch.

Mr. Ma said yes.

Mrs. Dowd expressed concern about the sanitation issue regarding handwashing and equipment cleaning.

Ms. McGrath referred the Board to the specific section of the regulation regarding the operation of a massage establishment. She further advised that they do make portable sinks with holding tanks.

Dr. Nedelman advised that the issues are the sink and the requirement that the therapists have to be certified.

Ms. McGrath advised the Board that she has outlined the regulation requirements with Mr. Ma and made it clear to him about the certification requirements for the therapist.

Mr. Ma advised that with the massage chairs, he will have a pushcart kiosk for the register and his supplies. He will use paper towels for cleaning. He does not use oils, creams or lotions.

Motion By: Dr. Nedelman to approve a variance to allow for application for permitting of the this specific chair massage request contingent that a portable handsink be provided within the chair massage area and the other requirements of certification be met.

Second By: Dr. Samuelson
Unanimously Voted

INFORMATIONAL:

MATTERS BY THE BOARD:

Ms. McGrath requested the Board's consideration to allow the Health Department to offer the flu vaccine to Town employees once the department has completed the large general flu clinic for residents. Ms. McGrath also advised that an MDPH guideline indicated once the residents were vaccinated, they have no concern with offering it to the general public because the goal this year is to try to get as many people vaccinated as possible.

The Board agreed to this request.

The Board also inquired about the Immunization Revolving Fund, and asked that the funds be utilized for necessary equipment and supplies.

Ms. McGrath advised the Board that three to four years ago the Board set the reimbursement rate for the nurses that assist us at the flu clinics at \$ 20.00 per hour. Ms. McGrath requested the Board consider an increase to \$ 30.00 per hour.

The Board agreed to set the new reimbursement rate at \$ 30.00 per hour.

Ms. McGrath advised the Board that the latest information received from Norfolk County Mosquito Control Project was that the area has received local frosts, but not killing frosts of mosquitoes. There is still mosquito activity, although not as many in number. Therefore, they suggested that the Board's recommendation to curtail outdoor activities between dusk and dawn should stay in place.

Dr. Samuelson expressed concern about the language in the standard tobacco sales notification letter that is sent to establishments to advise of a hearing.

Ms. McGrath advised the Board that she would review the standard letter with Town Counsel and make changes.

Motion By: Dr. Nedelman to adjourn the meeting at 8:25 pm
Second By: Dr. Samuelson