

BRAINTREE BOARD OF HEALTH

MINUTES

November 6, 2008

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

ALSO PRESENT: Marybeth McGrath, Director of ML & I
Carolyn Murray, Town Solicitor

Dr. Nedelman called the meeting to order at 7:02pm.

MINUTES:

Motion By: Mrs. Dowd to approve the minutes of October 2, 2008.

Second By: Dr. Nedelman
Unanimously Voted

OLD BUSINESS:

NEW BUSINESS:

1. Sale of Tobacco Violations

Present: Jerry McLaughlin, Enforcement Officer-South Shore Boards of Health Collaborative, Tobacco Control Program

a. A & L Convenience Store-593 Washington Street

Present: Andy Nguyen, Owner

Mr. McLaughlin advised the Board that on October 8, 2008 at approximately 5:42 pm, a routine compliance check was conducted. At that time, a seventeen year old female departed his vehicle and went directly into A & L Convenience Store at 593 Washington Street to conduct a compliance check, which is to see if a minor could purchase a tobacco product. She enter with no monies on her, except the money given to her by the Collaborative and with no identification. A few minutes later, she exited the premises, came back with a pack of Newport cigarettes which were promptly tagged as evidence and kept by the Collaborative until this night. The price of the cigarettes was \$ 6.75. The clerk was a male adult.

Mr. Nguyen advised that when he received the notification letter, he spoke with his employee. He said he asks everyone for ID, so Mr. Nguyen doesn't know what

happened on that day. Mr. Nguyen advised that his employees get training and always ask for ID. He doesn't know what happened that day.

Dr. Nedelman asked if Mr. Nguyen has any question about whether the sale did or did not take place that day. Dr. Nedelman asked if he has any evidence to show the Board in regard to argue that the sale did not take place, such as a video or computer.

Mr. Nguyen advised that their camera is broken, so he is going to fix it. He only has two employees and they have both been trained about asking for ID from anyone that looks under 27. He said he spoke with the employee, and the employee asks everyone who looks under 27 for ID.

Dr. Nedelman asked Mr. Nguyen how long he has owned the store.

Mr. Nguyen advised three years since 2005.

Dr. Nedelman advised that there has been a violation in September 2005, September 2006 and March 2007. So, there has been a violation every year for each of the years that he has owned the store.

Dr. Nedelman advised that this is the second sale within a two year period.

Ms. McGrath advised that the penalty for a second offense is a ten day suspension of the tobacco sales permit and a three hundred dollar fine.

Motion By: Paula Dowd to uphold the Board of Health regulation for a second sale within a two year period to begin on Friday November 7, 2008 at 12:00 pm.
Second By: Dr. Nedelman
Unanimously Voted

b. Highland Market-1719 Washington Street

Present: Mr. Patel, Owner

Mr. McLaughlin advised the Board that on October 8, 2008 at approximately 4:40pm, a routine compliance check was conducted at Highland Market located at 1719 Washington Street. At that time, a seventeen year old female entered the premises to complete a compliance check, which is to see if an underage buyer can purchase a tobacco product. At that time, she left Mr. McLaughlin's vehicle with no monies on her, except the money given to her by the Collaborative. She had no ID on her, or any other identification. She entered the premises, purchased a package of Newports, which Mr. McLaughlin has with him this evening, for \$ 6.35. She returned to his vehicle with the cigarettes and change. At that time, the cigarettes were tagged as evidence and kept by the Collaborative until this night. The clerk was a young adult male.

Mr. Patel advised the Board that the clerk did violate the regulations of the Board of Health because of lack of his attention. Mr. Patel immediately educated his staff for in the future, and they will try their best to do the ID check system so they can stop further violations in the future.

Ms. McGrath advised the Board that Mr. Patel is a new owner to the establishment, so this would be this establishment's first offense under the new ownership. Ms. McGrath advised that she has contacted the Collaborative and notified them.

Ms. McGrath advised that 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 and anyone involved in tobacco sales within the establishment must seek merchant education. The Collaborative can offer merchant education to the establishment.

Mr. Patel advised the Board that the change in ownership occurred at the end of March 2008.

Motion By: Paula Dowd to enforce the Board of Health regulation for a first sale within a two year period to begin on Friday November 7, 2008 at 12:00 pm.

Second By: Dr. Nedelman
Unanimously Voted

c. Seven Eleven-390 Washington Street

Present: Eskinder Fanta, Franchisee Store Owner
Jim O'Donnell, Field Consultant for Seven Eleven

Mr. McLaughlin advised the Board that on October 8, 2008 at approximately 5:30 pm, a routine compliance check was conducted. At that time, a seventeen year old female exited his vehicle with no monies on her, except the money given to her by the Collaborative and with no identification. She entered the premises of Seven Eleven at 390 Washington Street to conduct a routine compliance check, which is to buy a tobacco product. At that time, she did complete a purchase of a tobacco product with Newport cigarettes for \$ 6.75. She returned to his vehicle with the cigarettes, which were properly tagged as evidence and kept by the Collaborative for this night. The clerk was a male adult.

Mr. Fanta advised the Board that he spoke with the employee, who has been working there for seven years and is familiar with the system. Since they have been here before in this kind of situation, they have installed special training programs that are computer based and manual to familiarize a clerk with the sale of restricted items. He does not know how this thing happened. His cigarettes are \$ 6.78, so he does not know how \$ 6.75 occurred because that person has been working there for seven years.

Dr. Nedelman asked Mr. Fanta if he agreed that the sale took place.

Mr. Fanta advised that it is very hard for him to say that. Since they have experienced with this about two years ago, he has been very strict about training his people in terms of selling restricted items. For each restricted item they sell, they have to punch in the age manually in the register. In order for them to punch in the numbers, which is month, day and year, they have to physically see a state issued ID. They have been very strict on that.

Mrs. Dowd advised that she thinks with that as well, someone can say their birth date and put it in.

Mr. Fanta advised that for them to punch it in that it has to be physically visible by the clerk, even for a person they know.

Mr. O'Donnell advised that if he was the clerk, he could bypass asking for ID and plug in the numbers. Mr. O'Donnell advised that Mr. Fanta has been very diligent about having the clerks check for ID.

Mrs. Dowd advised that she was really sad to see his store because she knew he had been here and had been working really hard.

Mr. O'Donnell advised one slip up and somebody gets lazy.

Dr. Nedelman asked Ms. Murray if there was anything legally pending with previous violations.

Ms. Murray advised no those have been resolved.

Ms. McGrath advised the Board that this is a first offense within a two year period. Further, that 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: Paula Dowd to uphold the Board of Health regulation for a first sale in a two year period to begin on Friday November 7, 2008 at 12:00 pm.
Second By: Dr. Nedelman
Unanimously Voted

Mr. O'Donnell advised the Board that they have a computer based program for training, and inquired if this would meet the merchant education requirement.

Ms. McGrath advised that she contact the Director of the Tobacco Collaborative, and ask her to contact Mr. O'Donnell regarding this question.

d. Exxon/Super Petroleum-2140 Washington Street
Present: Manager

Mr. McLaughlin advised the Board that on October 8, 2008 at approximately 4:51 pm, a routine compliance check was conducted at Exxon/Super Petroleum at 2140 Washington Street by a seventeen year old female. She exited his vehicle with no monies, except the money given to her by the Collaborative, and with no identification on her. She exited his vehicle and went directly into Exxon/Super Petroleum and did purchase a tobacco product for \$ 6.50. She returned directly to his car, and the tobacco product was taken from her, promptly tagged by the Collaborative and held until this night. The clerk was a male adult.

Mr. advised the Board that they are very tough on their employees and anyone that does anything like that, they fire those people because they explain to them they cannot sell it. They have to check ID . They have all of the signs there. They try their best, but this is what happened. They have already fired that person.

Dr. Nedelman asked if he knows who made the sale.

Mr. advised yes he does.

Ms. McGrath advised the Board that this is a first offense within a two year period, and further that there has never been a previous sale at this location. It is a fairly new establishment opened about one and a half years. 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. The Collaborative can help with merchant education.

Motion By: Paula Dowd to implement the Board of Health regulation for a first sale in a two year period to begin on Friday November 7, 2008 at 12:00 pm.
Second By: Dr. Nedelman
Unanimously Voted

INFORMATIONAL:

2. SSBOHC- Tobacco Retailer Compliance Inspections

Ms. McGrath and Mr. McLaughlin advised the Board that tobacco retailer compliance inspections for signage and permits were conducted in Braintree, and the report before them reflects the results of those inspections.

Mr. McLaughlin also advised the Board that for a point of information. When a minor buys a product, they are not rounded off. They are \$ 6.67, \$ 6.69, \$ 6.73. Many times the clerk will give back thirty cents or a quarter. The Collaborative records on their record exactly what the buyer receives back in change. So, there may be a discrepancy of a few cents.

3. Flu Clinic-Saturday November 8, 2008 9 am-1 pm

MATTERS BY THE BOARD:

Ms. McGrath advised on behalf of the Board that she wanted to express her thanks to Ms. Murray for her response on the question presented to her about the health agent with regard to the Board of Health.

Mrs. Dowd also thanked Ms. Murray for attending the meeting this evening.

Motion By: Mrs. Dowd to adjourn the meeting at 7:40 pm.

Second By: Dr. Nedelman