



CITY OF NEW BEDFORD
JONATHAN F. MITCHELL, MAYOR

HEALTH DEPARTMENT
BOARD OF HEALTH

KIMBERLY A. GRIFFITH, PSY.D.
ELIZABETH M. BLANCHARD, M.D., FASCO
ALEX J. WIENER, MPH, FNP-C

DIRECTOR OF HEALTH
STEPHANIE SLOAN

APPROVED MINUTES

Regular Board of Health Meeting

Thursday, September 7, 2023 at 6:00 p.m.

Board to Convene Via Remote Participation

Alternative Means of Public Access Provided: Zoom Meeting/ Telephone Conference Call

To Join Zoom Meeting: <https://zoom.us/j/3966365159>

Dial-In: 1 646 558 8656 US Meeting ID: 396 636 5159

1. CALL TO ORDER

Meeting was called to order at 6:02 p.m. Meeting held remotely via Zoom, per state allowance due to the pandemic. Meeting recorded.

ROLL CALL OF MEMBERS

Present: Kimberly A. Griffith, PSY.D.
Elizabeth M. Blanchard, M.D., FASCO
Alex J. Weiner, MPH, FNP-C

2. APPROVAL OF MINUTES

Dr. Griffith called for a motion to accept and place on file the minutes of the previous meeting, held via Zoom on July 20, 2023. **SECONDED** by Dr. Blanchard. **ROLL CALL** - Dr. Blanchard, **YES**. Dr. Griffith, **YES**. Mr. Weiner abstained. All in favor. **MOTION CARRIES**

3. NEW BUSINESS

A. Request for Hearing: 466 Brock Ave., Yozakura Japanese Kitchen Re: Requesting a Variance for Sushi Rice.

Invitees: William J. Foley, Owner
Sofia DaCosta, Sanitarian
Joseph Carvalho, Environmental Health Program Director

Sophia DaCosta stated does not see the owner Mr. Foley here at the Board meeting.
Dr. Griffith stated item A is temporarily tabled until Mr. Foley appears and if the owner is not here by the end of the meeting, we will have to table it at the next scheduled meeting.

ITEM TABLED

B. Request for Hearing: 468 #1 Brock Ave., Little City Tattoo Re: Request for a Apprenticeship Variance for Brendalee Galarza.

**Invitees: Brendalee Galarza, Apprentice
Ann Gagne, Sanitarian
Joseph Carvalho, Environmental Health Program Director**

Ann Gagne stated Brendalee is doing an apprenticeship at Little City Tattoos and has not finished all of the required hours, so she is requesting a variance to use alternative (microblading) hours to become a practitioner. Ann Gagne stated that the Board could let Brendalee continue as an apprentice with limited supervision, as long as she would have people sign a waiver.

Brendalee asked for more specific guidelines on what the Health Dept. would need from her regarding hours. She is on 600 hours and has done more than 60 procedures. The regulations are not specifically related to microblading and are more specific to tattooing. The amount of procedures is the issue, rather than amount of hours. According to regulations, she has to do 150 procedures. The City of Boston, for example, regulates microblading apprenticeships differently than tattoo apprenticeships. Boston requires 200 hours of apprenticeship and completion of 50 supervised procedures. Brendalee has completed over 600 hours and over 60 procedures at this time.

Joe Carvalho went over her contract, which states a requirement of 150 procedures and 1,000 hours due to the complicated nature of procedures and color blending, etc, related to tattoo artists.

Brendalee said a micro blader does not do those kinds of procedures; we're talking about work in the eyebrow area.

Joe stated that level 1 contains a minimum of 150 procedures and 500 hours. He cautioned the Board that changing regulations here would set a precedent for how we move forward with granting practitioner status. He suggested that the Board could grant the ability to work unsupervised for the rest of the hours, potentially with a waiver from customers to allow her to work unsupervised.

Brendalee is okay with that as long as it is unsupervised. Microblading is very different from tattooing, she said, and added that is not tattooing – we are working in a gray area that has not yet been done in New Bedford.

Dr. Griffith asked if we have an example or template of a liability release or waiver that we could present to clients? Ann and Joe responded that we don't believe we have that on hand; could find one from other locations.

Dr. Griffith mentioned as an entity that supports the health and safety of the public, she wants to be certain that if the Board goes forward with this kind of modified (process), that whatever notification process the Board uses is truly informing the client of why they're being notified, with "thoroughly informed consent."

Mr. Weiner thinks it's reasonable to look at the best practices in other parts of the state; would be comfortable moving forward with an informed consent document.

Dr. Blanchard asked if Brendalee could be supervised by someone who does this work but is not performing the procedure. And how could we address the number of hours, which is thought to be excessive? Is there a compromise somewhere? The bigger picture is finding a mechanism for supervision in future instances.

Brendalee stated she definitely can find appropriate supervision outside of New Bedford, but not in New Bedford at the moment. She can look into practices in other cities.

The Board agreed on the idea of allowing Brendalee to do some of the work unsupervised.

MOTION: by Dr. Blanchard move to approve limited supervision, once per month until all hours and procedures are satisfied (150 Procedures and 500 hours) and with a waiver required.

SECONDED: by **ROLL CALL** – Mr. Weiner, **YES**, Dr. Blanchard, **YES**. Dr. Griffith, **YES**. All in favor. **MOTION CARRIES.**

C. Discussion & Approval of Emergency Response Plan & Odor Control Plan for Elevation Retail II, LLC of 2121A Phillips Rd, New Bedford, MA.

Invitees: Andre Arzumanyan, Owner

Atty. Chris Saunders, Law Office of Christopher T. Saunders, P.C.

Megan daCosta, Public Health Program Manager-Tobacco & Marijuana

Stephanie Sloan, Director of Health

Megan DaCosta stated Elevation Retail is a prospective adult use retail dispensary just outside of the New Bedford Business Park. They have provided us with the emergency response plan and odor control plan. Stephanie and Megan looked over all the information and had no issues with them.

Andre Arzumanyan stated they are headquartered in Massachusetts and have three locations in Massachusetts. The first one is the flagship, located in Norton near Xfinity Center; second is opening soon in Fairhaven; and the third is proposed for 2121A Phillips Road in New Bedford.

Andre said they have shared their plans for review, are adult-use retail only and all products come pre-packaged and sealed; odor is not an issue.

He said their Emergency Response Plan is a very robust document and they take emergency response security very seriously.

Atty Chris Saunders stated that everything that Andre said is accurate. In order to get approval for a marijuana establishment, city ordinances require a special permit with the Planning Board, and

sign-off from the Board of Health on plans including odor control and emergency response. The NBPB and NBFD chiefs have signed off on these plans and Elevation is respectfully asking that they be approved to move on to the next step so they can have this project vetted before the Planning Board.

Dr. Griffith asked if the intention of this location is to remain recreational retail-only, or would there be plans for any additional components in the future, such as cultivation or on-site preparation.

Mr. Arzumanyan stated at present they do not have any plans to go upstream or expand operations: "We want to become excellent at serving customers before biting off any more." He added that they don't have core competency for cultivation at this time and they are not pursuing medical currently but do have a discount schedule for medical cardholders.

Dr. Blanchard asked about security and daily procedures.

Mr. Arzumanyan said they conduct a daily audit of every single unit that is out on the sales floor before opening. All products are moved in and out of the storage vault at opening and closing, and there is real-time video surveillance across the entire building. The building is split into three levels of access control with a robust alarm system, motion detection and unarmed security. Security staff is trained to not attempt violent intervention if there is an intrusion; rather, grant intruders' demands, resolve the situation safely and utilize their insurance policies.

MOTION: Dr. Griffith moved to approve emergency response and odor control plans for Elevation Retail at 2121A Phillips Road in New Bedford. **SECONDED:** by **ROLL CALL** – Mr. Weiner, **YES**, Dr. Blanchard, **YES**. Dr. Griffith, **YES**. All in favor. **MOTION CARRIES.**

D. Request for Hearing: Discussing the Correction/Cease and Desist Order for 2nd Violation in 36-month period, \$2000 fine issued & 7-day suspension of sales permit at Stop and Save, 129 Ashley Blvd. New Bedford, MA 02746.

Invitees: Mohammad Alam, Owner
MR Rayhan, Manager
Det. Nathaniel Almeida, New Bedford Police Department-OCIB
Megan daCosta, Public Health Program Manager-Tobacco & Marijuana
Joseph Carvalho, Environmental Health Program Director
Stephanie Sloan, Director of Health

Megan DaCosta stated that we were notified of a violation that occurred at Stop and Save via a police report. This is their 2nd violation. Both were for flavored products with this one occurring on June 23, 2023.

Det. Almeida stated on June 23rd detectives were conducting surveillance at Stop and Save and observed the store clerk exiting the store and going to a parked Toyota van. The detective said the clerk grabbed a black plastic bag then walked up to another vehicle that had pulled into the lot and was waiting for him; handed a person in the vehicle the bag and money was exchanged; the clerk went into store and came back with money, which appeared to be change.

Stop and Safe is known to detectives as a high-traffic area for narcotics; detectives believed a narcotics exchange had just occurred.

The detective obtained the bag and found that it held menthol pipe tobacco; person said he had paid clerk \$10 for bag; detectives entered store and advised clerk of what they had seen. Detectives observed menthol products, vape products, flavored tobacco products in the vehicles.

Products observed in the store were:

- Newport menthols, Newport menthol 100s
- Crave and other brands of flavored vape pens.
- Flavored cigars
- Cartons of Marlboro 100 cigarettes (Marlboro reds) with NH tax stamp on the bottom

All items seized and inventoried, along with \$10 seized from store following the sale.

Megan: We were deemed as the enforcing body for this police report; issued a fine on July 21st; fine paid Aug. 3, 7-day suspension served Aug. 4 – 11. In terms of violations they have met our requests.

MR Rayhan: Previous employee brought personal items to the store; we didn't know what was in the black bag or what was in the van; he said, "we don't know about what people do outside," and "we were shocked." He said people also may have brought items from other stores.

Dr. Griffith: To clarify, there is a van in the parking lot that is abandoned, and you don't know who it belongs to, but it's full of illegal MA tobacco items.

Rayhan: It belonged to the store before; a previous employee who was fired two years ago drove it to carry supplies to store, and for personal use; van remained after he was fired, no one touched it or drove it, it was sitting there. He said, "We try to follow the rules as much as we can."

Dr. Griffith: But this is your second violation in a 36-month period. To clarify, a former employee has a van in your parking lot ... and people bring items from the van into the store and sell products out of it.

Rayhan: Current employee did not know what was in the van; he thought the black bag might have had items for the store, legit items, and police came after him at same moment he was bringing bag into store. The former employee is no longer working for Mr. Rayhan.

Dr. Griffith: Is that (current) employee still employed? (Rayhan: yes) What is the status of the van? (Rayhan: It is up for sale)

Detective: Items that were seized have been held as evidence right now.

Detective: Items in store, behind counter, were consistent with items in the van; his belief is that items were held in the van until they were brought inside the store.

Rayhan: “I apologize about it; I was confused about it.” At that time, it was behind the counter. He stated that they trained the employees about the tobacco regulations; what was legal and illegal.

Dr. Griffith: Surely by now you understand the seriousness of any violation; “this particular violation is incredibly suspicious and egregious – it does sound like you trained an employee who knew and was conveying illegal products, with or without your knowledge, into the store.”

Megan DaCosta: first violation was December 17, 2020 – for only menthol cigarettes; we are violating for just what was found inside the store; we can’t violate for anything found in parking lots, cars, etc.

Dr. Blanchard: I agree, this seems particularly egregious; I wish there was a spectrum of fines. Would like to hear a detailed plan to make sure it does not happen again.

Rayhan: I will take responsibility for anything in the future; I am still learning about regulations and teaching employees at the same time.

Dr. Griffith: You have a responsibility to know what the regulations are, not to learn them as you go; and anyone who works in your store has a responsibility to know them. Learning as you go is not the way to avoid violations and not the way to avoid breaking the law. I would love to hear some kind of greater detail about how you will prevent this kind of thing from ever happening again.

Mr. Rayhan stated he will talk to his boss and see what they can do differently and check with Megan on putting more signs in the store.

Mr. Weiner: What is the training you received from your boss? Were there menthol cigarettes in the store?

Mr. Rayhan: It accidentally happened but yes it was in the store. I was not at work that day.

Mr. Weiner: What type of training did you provide your employees?

Mr. Rayhan: They cannot sell this kind of stuff, they cannot bring their personal stuff inside the store, if they find this stuff, they have to throw it away immediately. His boss has given him access to now watch the store cameras all the time.

Mr. Weiner: The most obvious question is why this employee is still working for the store?

Mr. Rayhan: Right now, my boss is looking for a replacement who can work in place of that employee.

Dr. Griffith: It’s really important for you to understand that our entire goal is to prevent products that are illegal in MA from being sold, and people who aren’t allowed to purchase them from purchasing them. Our entire goal is prevention. How can we be sure that we never see you here again? Violation #3 means you lose the permit to sell – you lose the ability to sell at all.

- We want to help you not have a third violation, and also, if we do see you again, the chances are very great that the violation will result in revocation of the permit completely. Do you understand?

Mr. Rayhan: Yes, I understand. It's not going to happen again.

E. Request for Hearing: Discussing the Correction/Cease and Desist Order for 2nd Violation in 36-month period, \$2000 fine issued & 7-day suspension of sales permit at Family Dollar #11497, 537 Orchard St. New Bedford, MA 02744

**Invitees: Jessica Phillips, District Manager
Megan daCosta, Public Health Program Manager-Tobacco & Marijuana
Joseph Carvalho, Environmental Health Program Director
Stephanie Sloan, Director of Health**

Megan DaCosta: the first violation was sale to a minor, March 22, 2023, second was sale to a minor on Aug. 2, 2023, 7-day suspension between Aug. 23-30, fine paid Aug. 22.

Jessica Phillips, District Manager for Family Dollar Store #11497. Associates are trained immediately in tobacco and alcohol compliance upon being hired.

Unfortunately, this was a young male associate who doesn't follow our procedure and didn't take ID

- The whole team has been retrained again; associate who committed violation was terminated; "we have zero tolerance for selling to minors."
- The first offense was another associate coming from another store.

Dr. Blanchard: What is the process for scanning IDs?

Jessica Phillips: Associates scan ID and tell whether person is old enough; fairly simple process; "we really lag behind in the technology world" regarding their POS.

Mr. Weiner stated curious about the technology part but maybe putting up signs at the registers that say asking for ID would help.

Board members reiterate the seriousness of the 2nd violation; urged solutions to prevent future violations.

Megan stated we do have signs, which I could drop some off at the store.

F. Request for Hearing: Discussing the Correction/Cease and Desist Order for 2nd Violation in 36-month period, \$2000 fine issued & 7-day suspension of sales permit at Lucky 7 Food Mart, 190 Weld St. New Bedford, MA 02740.

**Invitees: Manubhai Patel, Owner
Himali Patel, Manager
Megan daCosta, Public Health Program Manager-Tobacco & Marijuana**

**Joseph Carvalho, Environmental Health Program Director
Stephanie Sloan, Director of Health**

Dr. Griffith stated no one was present; neither owner nor manager; so, we passed over this item. Dr. Griffith: Goal is to facilitate compliance; without someone here, unsure of how to proceed.

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G. Request for Hearing: Discussing the Correction/Cease and Desist Order for 2nd Violation in 36-month period, \$2000 fine issued & 7-day suspension of sales permit at Joe's Gas, 277 Nash Rd. New Bedford, MA 02746

Invitees: Rafic Matta, Owner

**Megan daCosta, Public Health Program Manager-Tobacco & Marijuana
Joseph Carvalho, Environmental Health Program Director
Stephanie Sloan, Director of Health**

Megan DaCosta stated Joe's Gas is here for 2nd violation, both for sales to a minor the first was for Oct. 31, 2022, and 2nd August 17, 2023, their \$2,000 fine paid Aug. 29, 2023. They have yet to serve a 7-day suspension which they will do after this meeting.

Rafic Matta apologized for what happened; employees are 22 and 24 years old; one just got fired. He has acquired an ID scanner and attached it to the register.

Dr. Griffith stated that it is good you have an ID scanner but that only works if people ask for the ID. What is your policy in the store now?

Rafic Matta stated the only thing we can do is check ID every day.

Dr. Blanchard: I appreciate you being proactive and investing in a scanner and emphasizing policy.

Mr. Wiener stated it's not easy and frustrating but as much as you can keep training your employees, make them aware how serious this is and watch over the new employees too.

H. Request for Hearing: Discussing the Correction/Cease and Desist Order for 2nd Violation in 36-month period, \$2000 fine issued & 7-day suspension of sales permit at Royal Fuel, 1194 Kempton St. New Bedford, MA 02740

Invitees: Haji Ahmad, Owner

**Umar Iffikhar, Manager
Megan daCosta, Public Health Program Manager-Tobacco & Marijuana
Joseph Carvalho, Environmental Health Program Director
Stephanie Sloan, Director of Health**

TABLED

I. Request for Hearing: Discussing the Correction/Cease and Desist Order for 1st Violation in 36-month period, \$1000 fine issued & 3-day suspension of sales permit at Richdale Food Shops, 951 Brock Ave. New Bedford, MA 02744

Invitees: Hevan Patel, Manager

Megan daCosta, Public Health Program Manager-Tobacco & Marijuana

Joseph Carvalho, Environmental Health Program Director

Stephanie Sloan, Director of Health

Megan stated the fine is paid; they are appealing three-day suspension, but no one is present to speak at meeting.

Dr. Griffith: Not inclined to grant appeal, given no one present.

MOTION: Dr. Griffith moves that they deny request of appeal for 3-day suspension for first violation in a 36-month period of Richdale Food Shops at 951 Brock Ave and instead that the 3-day suspension be enforced. **SECONDED:** by ROLL CALL – Mr. Weiner, YES, Dr. Blanchard, YES. Dr. Griffith, YES. All in favor. **MOTION CARRIES.**

J. Request for Hearing: Discussing the Correction/Cease and Desist Order for 3rd Violation in 36-month period, \$5000 fine issued, 30-day suspension of sales permit, and possible permanent revocation of sales permit at Keno Corner Store, 251 Orchard St. New Bedford, MA 02740

Invitees: Afroja Moni, Owner

MD Nowshad Nerob, Manager

Megan daCosta, Public Health Program Manager-Tobacco & Marijuana

Joseph Carvalho, Environmental Health Program Director

Stephanie Sloan, Director of Health

TABLED

5. NEXT MEETING DATE

6. HEALTH DIRECTOR'S REPORT

A. General Updates

Stephanie: She would like to begin by checking in on the new process for providing Board members with documents needed for each agenda item ahead of Board meetings.

Dr. Griffith: Very much appreciates having all meeting documents in one PDF, with corresponding page numbers in agenda; great improvement.

Stephanie: South Coast Renewables update, on the proposed waste management facility in New Bedford Business Park: South Coast Renewables have asked for an extension to respond to public comment; their formal response to all public comment is due Sept. 27, and that extends MassDEP's decision deadline to Nov. 1.

- Once the MassDEP decision is made, if positive, we would have at least one public hearing within 30 days, and the Board of Health then would determine whether the site was suitable.

Stephanie: We are moving forward with our quality improvement process in the Health Department. One recent example is work to implement Language Line interpretation services at the front desk, so we will have language capacity for all speakers. We also have changed our phone system so everyone who calls the main Health Department phone number now is offered the opportunity to leave messages in Spanish, Portuguese, or Cape Verdean Creole, in addition to English.

7. **NEW BUSINESS NOT REASONABLY ANTICIPATED AT TIME OF POSTING**

8. **ADJOURN**

Dr. Griffith **adjourned** the meeting at **7:40 p.m.**

A true record attest:

 (SS)

Health Department Chairperson

BOH Meeting Minutes Approved 10 / 18 / 23