

Town of Concord  
Board of Health

Minutes of the Meeting

February 11, 2020

PRESENT: Dr. Deborah Greene, Chairman  
Mark Haddad, Esq.  
Alma Healey, RN  
Raymond Considine  
Jill Block  
  
Susan G. Rask, Public Health Director

OTHERS: Richard Beers, owner Colonial Motors, 1211 Main Street; Sam Jung,  
employee, Colonial Motors

1. **OPEN MEETING**

The Chairman opened the meeting at 7:00 p.m.

2. **PUBLIC HEARING – By Order of the Board of Health**  
**SALE OF TOBACCO & NICOTINE DELIVERY DEVICES**

Colonial Motors, 1211 Main Street

The Board met with Richard Beers, owner Colonial Motors Convenience Store and his employee Sam Jung to discuss a violation (sale of tobacco to person under age of 21) of Concord Board of Health Regulation, Sale of Tobacco Products and Nicotine Delivery Devices and the plan for changes in the sales procedures that will prevent this from occurring in the future.

Background

On January 21, 2020 Maureen Buzby, Tobacco Control Coordinator conducted a youth compliance check for adherence to the above referenced regulation. This regulation defines the Minimum Legal Sales Age as twenty-one (21). During the compliance check an eighteen (18) year old female purchased a package of Newport cigarettes (for a price of \$11.25).

The next day, PHD Rask issued a \$100 dollar citation under the non-criminal disposition bylaw. During previous compliance checks since 2015, Colonial Motors has sold tobacco products to under age purchasers twice (April 2015 and October 2016).

## Discussion

Mr. Beers introduced Sam Jung (sp) the employee who sold the product and asked him to explain what happened. Mr. Jung acknowledged that he had not followed proper protocol by not checking the person's identification; he said it was not an excuse but he had been quite overwhelmed that particular day and it was a lapse in judgment. He said it would not happen again.

Dr. Greene inquired about the type of training Mr. Jung had received from his employer relative to compliance to the Board's Tobacco Sales regulation. He stated that there was a notice on the cash register to check identification. At this point, Mr. Beers interjected that his employee had been shadowed by a trainer 7-10 days prior to being left on the register alone. He also said his employee had not been feeling well that day and presumes that played into the lapse in judgment.

Dr. Greene stated that the Board of Health had spent months over last year discussing how to prevent youth access to nicotine/tobacco products and although Vaping had been the primary concern the Board was also concerned about combustibles (traditional cigarettes) saying nearly two thousand adolescents become daily smokers in the United States on any given day and that the window of opportunity to prevent that from happening could literally be as simple as preventing the sale of one pack of cigarettes. Recognizing that retailers had not created the problem she said all parties needed to be part of the solution. Chairman Greene said she had not heard anything from either the owner or employee on what the plan of action moving forward will be to prevent this from happening again.

Mr. Beers said he would ensure that his employee had a senior clerk (employee) working with him for the next 7-10 days and would implement a policy that every person regardless of age would be asked to show his/her identification if purchasing tobacco products as it is often done with the purchase of alcohol at a liquor store.

Jill Block stated that she personally had hoped that during the time leading up to June's meeting that Concord's tobacco retailers would be much more vigilant about ensuring that minors were unable to access tobacco products. Ms. Block said that if things continued to go wrong (i.e., sales to minors) when the Board reconsiders moving its amended tobacco regulation forward she would expect these violations to have significant weight on the Board's deliberations. Ray Considine suggested that the owner spend some time with his entire staff educating them on the dangers and risks of smoking and tobacco/nicotine use particularly amongst the youth.

No further action was taken.

### **3. DISCUSSION – Wireless Technology & Electromagnetic Fields (EMF's)**

Dr. Greene noted that the Board had received letters from Concord residents asking that it take a position and/or comment on the issue of Wireless Technology and Electromagnetic Fields (EMF's) (Smart meters, safe tower sites and other related issues). Although this issue was outside the purview of the Board of Health, Dr. Greene wanted to be sure that it was listening to resident concerns and that Board members were educating themselves as best they could on the topic.

Dr. Greene referred specifically to an email letter<sup>1</sup> from Alisha Boyajian that outlined research by Ronald Kostoff, PhD from the Georgia Institute of Technology as well as some legislation passed in Oregon and New Hampshire directing its state public health department to review all non-industry funded

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<sup>1</sup> Email Letter from Alisha Boyajian dated 1/29/20

research (Oregon) and make recommendations particularly as it relates to exposure to children (report deadline of January 2021) as well as forming a commission (New Hampshire) to examine potential health and environmental impacts. In her letter, Ms. Boyajian asked the Board to invoke the “Precautionary Principle” which Dr. Greene explained was “taking preventative action in the face of uncertainty, shifting the burden of proof to the proponents of an activity, exploring a wide range of alternatives to possible harmful actions, and increasing public participation in decision making.”

The Board also received correspondence from members of Concord Safe Technology (Virginia Hines, P.A. LMHC and Courtney Whelan, RN) urging the Board to continue research on human and environmental health impacts of wireless technology before making a decision about its safety.<sup>2</sup>

Dr. Greene said she was grateful to have citizens who were invested and interested in all issues concerning the Town and that the Board was happy to listen, but she was not confident that it had the expertise or time required to adequately study the matter. At this point she opened the discussion to the other Board members.

At the last meeting, in response to resident concerns, members had asked PHD Rask to provide them with some basic scientific information on smart meters, wireless technology and EMF’s. After reviewing the material, Mark Haddad did not see the need for the Board to take a special position. He agreed the Board should stay informed but he was perplexed why the immediate issue of smart meters was more problematic than the many other wireless devices in people’s lives, including cell phones.

Jill Block and Alma Healey queried whether other communities had faced these challenging decisions or if there was precedence for oversight by a local Board of Health. Ms. Rask believed the Town of Ashland had similar resident concerns and would reach out to its Health Director and report back at the next meeting. Ms. Healey asked if PHD Rask knew how many smart meters had already been installed in Concord and how long ago they had been. PHD Rask noted that she did not know but would contact Concord Municipal Light Plant and forward the information to the Board.

PHD Rask informed the Board that she knew of two MIT-Health Physicists who she could invite to a meeting to provide some basic education on the subject if the Board was so inclined. Board members agreed that would be beneficial.

After further discussion, the Board directed PHD Rask draft a letter to the Commissioner of MDPH suggesting the State may consider taking similar action to the State of Oregon and to provide guidance to local Boards of Health on the matter, as well as extend an invitation to the health physicists to attend a future Board of Health meeting.

#### **4. DISCUSSION – Board of Health Tobacco Regulation**

Dr. Greene recapped the main points of discussion at the January meeting where Town Counsel had met with the Board to provide an overview of the differences in Governor Baker’s newly enacted tobacco regulation and the Board’s proposed regulation. Because the new State regulation achieved some of the goals the Board put forward in its’ proposed regulation “Restricting the Sale of Tobacco Products” it had previously VOTED to table it for reconsideration after June 1, 2020. In the meantime, Dr. Greene thought it important for the Board to continue to craft and think about some alternative tobacco restrictions in an effort to eliminate youth access. Some of ideas for consideration:

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<sup>2</sup> Letter from Virginia Hines and Courtney Whelan dated 1/30/20

- Flavor Ban  
Enact a flavor ban of all tobacco and nicotine delivery products, including mint and menthol. She noted that the State regulation still allowed flavored tobacco products in “smoking bars” and that a broader flavor ban(including mint and menthol) may dissuade that type of establishment from opening in Concord.
- Restriction of Sales  
Limit the sale of tobacco products in the Town to liquor stores only.

Dr. Greene expressed deep concern about easily influenced young people shopping in convenience stores buying a Gatorade or candy bar that is placed right next to all of the tobacco advertisements.

- Banning Tobacco and Nicotine Delivery Advertisements in Convenience Stores  
Prohibit advertisements for Tobacco and Nicotine Delivery Devices

Dr. Greene asked about the possibility of increasing youth tobacco compliance checks. Ms.Rask advised that MDPH had recently allocated funding for the enforcement of the state tobacco regulations. The majority of funding will go to existing Tobacco Control Programs (TCP) but a portion will be used for requests from cities or towns not in an established TCP. She explained that DJ Wilson recommended that these towns request funding to be allocated to an existing TCP so that it could provide the service as opposed to duplicating efforts and the need to establish a new program. Ms. Rask advised the paperwork for funding was submitted that morning.

If DPH denied the request, then Concord would likely partner with the Town of Bedford Health Department to request joint-funding but this would require the creation of a new TCP for both towns. PHD Rask stated that would be very challenging for an already overstretched Health Department staff.

Mark Haddad supported the idea of prohibiting advertisements and placing product behind the counter or in a cabinet. PHD Rask had already discussed those proposals with Town Counsel and Mr. Makarious felt they were all doable.

The Board continued discussion on the possibility of implementing a “secret shopper” program and acquiring funding via additional fees as part of the licensure. If a retailer sold to a minor during one of these inspections then it would count as violation as it related to their local license and suspension but state fines would not be applicable because it is not a “valid” compliance check. Ms. Rask will investigate this approach and report back to the Board.

Discussion continued – two members of the audience spoke as it related to the proposed regulation and point of sale devices. Pat Winward, a sales associate at 7-Eleven said that after the last meeting, the owner of the store removed all tobacco advertisements and placed the product behind the counter. Also, their point of sale machine scans the license (recognizing the birth date) and will not unlock the register if the purchaser is underage; he noted that 7-Eleven policy is to card all customers. Joe Saia, owner of West Concord Liquors said that his point of sale actually brings up all of the information on the person’s identification and said he had been using this in his stores for many years.

Board members all agreed that they wanted to move forward with some additional restrictions whether they moved forward with their previous version or not. Moving forward for the next meeting, PHD Rask will incorporate the flavor ban restriction into Concord’s existing tobacco regulation and send it

to Town Counsel for review. In addition to that, Ms. Rask will work with Town Counsel to frame a separate regulation including the following topics discussed as follows:

1. Enact a ban on flavors including mint and menthol
2. Restrict the sale of tobacco to liquor stores OR
3. Prohibit ALL tobacco advertisements in Retail Convenience Stores
4. Mandate all tobacco products be stored under counter or in separate cabinet
5. Mandate a Point of Sale (POS) device that locks without ID scan
6. Mandate Secret Shopper Program (violations would count towards license suspension)
7. Stacking Fines (i.e., two separate violations during an inspection would constitute (2) separate fines).
8. Determine the number of Tobacco Sales Licenses Concord wants in the entire town; reduce the number of Tobacco Sales Licenses via attrition (non-transferable at sale)

The Board plans to continue this discussion at its next meeting.

## 5. **BOARD MEMBER REPORTS**

Dr. Greene said this year's influenza season was continuing and extremely robust. She said the hospital was seeing many patients with the disease. Unfortunately, now on the radar was Coronavirus (COVID-19).

Ray Considine provided the Board with some informational handouts. One of them related to the "SAPHE" Act (a bill being brought forth by Representatives Kane and Garelick and Senator Lewis) that will increase funding for local boards of health by (1) increasing training opportunities for staff and board members; (2) creating incentives for shared services; and (3) creating standards for credentialing. Mr. Considine asked the Board to consider lending its support for the measure. Following a brief discussion, it was determined that PHD Rask will draft a letter to be reviewed and considered at the March meeting.

## 6. **STAFF REPORTS**

PHD Rask provided the Board with the most recent information she had received from the State on the Coronavirus outbreak. As of this moment, she said that there were certain travel restrictions to and from countries particularly hard hit by this virus. She expected that things would begin to change in the United States quickly and she had been working very closely with Public Health Nurse Trish McGean, the hospital and MDPH, keeping an eye on movement.

## 7 **BOARD CALENDAR & MINUTES**

The Board reviewed the December 16, 2019 minutes – Mark Haddad had minor edits (typos) which he will forward to Administrative Assistant Karen Byrne. Vote will be taken at the March meeting. The January meeting minutes were not completed at the time of the mailing of the packets and will be sent via email.

The next regularly scheduled meeting of the Board of Health is Tuesday, March 17, 2020.

The meeting adjourned at approximately 9:00 p.m.

Board of Health

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Respectfully submitted by,<sup>3</sup>

Karen M. O’Keefe Byrne, Administrative Assistant  
Concord Board of Health

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Dr. Deborah Greene, Chairman

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Mark Haddad, Esq.

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Jill Block

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Alma Healey, RN

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Raymond Considine

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<sup>3</sup> Minutes were drafted via audio tape