

**Meeting Notes from a Meeting of the Peabody Board of Health,  
held remotely via Zoom Video Conference, Thursday, November 19, 2020 Participating in the  
Virtual Meeting: Dr. Leigh Ann Mansberger, Chairman Thomas J. Durkin III, Tony Carli,  
Health Inspector John Yale, Health Inspector Randy Suckney, Health Department Director  
Sharon Cameron, and Recording Secretary Lisa Greene.**

**Subject:** Meeting called to order

Chairman Durkin called the meeting to order.

**Subject:** Hearing re: application by Jennifer Tomilo to perform body tattooing

**Discussion:** Mr. Durkin opened hearing at 4:30, asked Ms. Tomilo to tell some background. Ms. Tomillo explained that she was a tattoo artist in the past but stopped to work in mental health facility, but a friend has opened a tattoo parlor in Peabody and she decided to fill out the forms to return to it. Inspector Yale said that he reviewed the forms and submissions and everything was in order. Dr. Mansberger said that she found that everything was in order and had no questions. Mr. Carli agreed that he found everything to be in place. Ms. Cameron asked Ms. Tomilo about Covid safety protocols she will be using as an artist. She replied that cleaning and hygiene are important and even before covid. Ms. Cameron asked more on Covid , and Ms. Tomilo explained that the owner plans to train her on the protocols that he has in place. Dr Carli made motion to grant the permit, and Dr. Mansberger seconded. A roll call vote was held, all unanimously agreed to grant the permit.

**Subject:** Hearing re: Order to Cease and Desist at Forever Flawless

**Discussion:** Mr. Durkin opened the hearing at 4:35. Ms. Cameron explained that Benito Malool is the owner of the Forever Flawless store and an additional kiosk (Sericin), and that the Health Department has received several complaints saying that he and his employees continue to provide samples and to apply products to clients' skin despite the Governor's orders prohibiting product application for retail businesses. She explained that the staff of the health department have had several meetings with Mr. Malool to go over the regulations, yet complaints continue to be received, including complaints on July 28<sup>th</sup>, August 4<sup>th</sup>, October 4<sup>th</sup>, November 2<sup>nd</sup>, and November 4<sup>th</sup>. Site visits had taken place on July 28<sup>th</sup>, August 4<sup>th</sup>, August 28<sup>th</sup>, November 3<sup>rd</sup>, and November 4<sup>th</sup>. On August 11 the first notice of violation was issued covering the July 28 and Aug 4 site visits. A 2nd notice of violation was issued in October, then on November 12<sup>th</sup> they issued a cease and desist order to close the business since the staff continued to apply product against the order of the BOH and the Governor. On July 9, August 4<sup>th</sup> and 5<sup>th</sup>, October 8<sup>th</sup>, October 20<sup>th</sup>, and November 3<sup>rd</sup> Health Department staff had discussions with Mr. Malool to give guidance and assist with understanding the requirements, but repeated violations continued to occur despite the great deal of time spent providing guidance. Ms. Cameron reminded that Mr. Malool was before the board last month as well, at which time the board upheld the violation but had waived the fine, with a caveat that it would be reinstated if another violation occurred.

Ms. Cameron went on to explain that the day after Mr. Malool was before the board last month, the state had changed the guidelines to again allow product sampling, as long as there was no direct application involved by store staff and as long as products were sampled using single use

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applicators. However it has been documented with photos and videos that he and his staff have been applying products directly to clients. Ms. Cameron added that on one occasion she happened to be at the mall for other business and on her way to leave the mall after her meeting she observed Mr. Malool and another staff applying product directly to clients simultaneously.

Inspector John Yale told this these inspections are not typical inspections but specific to Covid requirements, and told that on one occasion he made a site visit and observed employees applying product at that time. He told employees that they couldn't apply product because of the Governor's orders due to the pandemic. He said that he then received an email from Mr. Malool and then they emailed back and forth several times discussing the state requirements before Mr. Malool said he would comply. Mr. Yale then explained that he shortly after this received another complaint, adding that he would not go out unless complaints were received, and that he is not targeting this business but his inspections were complaint driven. He told that on August 8<sup>th</sup> he took picture of staff applying products directly to customers, and that he was also present at the mall on November 4<sup>th</sup> and witnessed the application of products directly to client's faces. Inspector Randy Suckney then told that on November 3<sup>rd</sup> he had responded to a complaint received through the state covid business complaint portal, and he went out and observed a young woman at their kiosk near Starbucks applying a product to a client. He filmed this as evidence and then approached and asked her to stop what she was doing and asked her to call Mr. Malool. He then showed him video and told him again that employees are not allowed to approach within 6 foot distance and not allowed to touch clients, but Mr. Malool said that employee had not touched the client, said there was no reason for inspectors to be coming there and said that they are targeting him. Inspector Suckney then walked toward the second location, the actual store, and once there he noted a lack of social distancing on that occasion. He told that he was also there with Ms. Cameron and witnessed the staff administering products to customers on November 4<sup>th</sup>.

Ms. Cameron added that his staff were also not properly wearing masks, and some were wearing only face shields. She also told that on one occasion Mr. Malool ran to chase down a client to ask her to tell Ms. Cameron that he did not touch her, but the client said that he did touch her and demonstrated where on face Malool had touched her, but Mr. Malool continued to argue with the client, and the client became uncomfortable and left. Dr. Mansberger asked if this issue is in regard to this being classified as a retail business, but is he actually applying to be a cosmetologist. Ms. Cameron replied that he does not have his cosmetology license yet, and the business does not meet the requirements for a personal care business such as sinks and would need some alterations if that is applied for.

Mr. Malool said that the day after last meeting the state guidelines were changed. He said Ms. Cameron was very helpful at first, but added that he knows that she tried to explain but said that she did not. The last meeting he said was frustrating, and he had just gotten a \$1,000 fine, and the next time she came again said you are going to get another \$1,000 fine and you will be shut down. He told that he has completed all of the paperwork for the state to obtain a cosmetology

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license. He told that she Ms. Cameron had met their cosmetologist, and he had sent in for his license, and was told that someone will come in to check what was needed and he learned that they will need a sink. He told that they are a skincare store, even though right now we are listed as a retailer but we are a skincare store and once paperwork is done they will be able to go back to doing what they do which is demonstrating high end product for customers. He told that his is a small business, and that he sees 5-10 customers in a day, maybe 15 customers in 2 locations. He added that his store and his kiosk are completely separate operations, but Ms. Cameron said she would close both locations if we don't stop. He told that he has to make money, adding that even right now he came from work for this meeting to talk and not rush. He asked for the members of the Board to look and see the proof, that he believes they will decide it is not so. He said that there is a need to communicate, he needs them to say you can do this and you can't do this, adding that he is by himself overseeing four employees, and has personally trained all employees. Since November 4<sup>th</sup> he has been in the store and training how to do their product sampling without touching, and said that he has his staff give the product to clients to apply by themselves. He added that, as a small business owner, he is trying to find a way to stay open during the pandemic and to bring money to his family. Mr. Malool then said that Sheena Hinds, Vice President of leasing of Forever Flawless, is here today as well, and that she can help so that he can better understand. He added that he can show proof that he shipped his application for a cosmetology license with Fed Ex yesterday. He went on to say that if they really have proof of what they are saying, he is sorry. He said that his staff forgot something really small. He told that he had sent Ms. Cameron an e-mail apologizing for his behavior. He was very upset after hearing he might be closed. He again apologized to Ms. Cameron for his behavior, and said that he knows that she tried to help, but he is sorry he reacted badly the last time they met.

Sheena from Forever Flawless said thanks for allowing her to speak. She told that navigating through the Covid process is difficult for everyone, and said that for Mr. Malool, with the language issue, things are even more difficult. She added that she also would like to see the proof of the locations and times of the violations, since Mr. Malool said he was not applying products. She said that she wants to see those videos because if he did it or his employees did, she would want to see. She added that maybe the video was shot from too far away, but if not we can see what happened. She added that Mr. Malool has been a professional in this area for several years, adding that he is not just a retailer, everyone knows that we build these rooms specifically so that we can apply these products. She added that this is allowed under the lease agreements at these malls so, in our minds, that may be where it may be a disconnect. She restated that Mr. Malool has submitted an application for cosmetology license, and again said that she would appreciate the option to see the evidence and then she could work to rectify the situation.

Mr. Durkin asked if Mr. Malool and his staff are not allowed to be within six feet of a customer. Ms. Cameron replied that they are not. He went on to say that sometimes pictures can be off a bit, but not off by six feet, so this is not a matter of a finger or spatula, because according to the

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ordinance, they should not have even been within six feet of the clients. Ms. Cameron told that on the November 4th visit, when Mr. Malool brought the customer back to talk with her, he demonstrated what he did, and in doing so he squirted some lotion onto his hand which was not gloved, then used a spatula to apply the product from his hand to the client's face, which was problematic. She added that on the issue of the two businesses, both are operated by the same person, both share employees between the two locations, and the kiosk and Forever Flawless are both leased to the LLC with Mr. Malool as primary party. Ms. Cameron also said that she appreciates Mr. Malool's apologies, but said that the actions that have been taken have nothing to do with angry inspectors, but resulted from several frightened and emotional customer complaints about being put into an unsafe situation. She added that her staff have put a great deal of time during pandemic into helping Mr. Malool, but added that it is not our job to be on site managing and overseeing his business. She reminded that, at the last meeting, she was the one who suggested holding the \$300 fine in abeyance to offer some relief to Mr. Malool, so that in itself shows that there are no angry feelings. She said that she will feel differently once this business is licensed by the state, but added that we are not there at this point.

Mr. Malool said about the customer, he applied product to her, and if he did something wrong, she should have told him because he just needs to be told and shown. He said that he is not going to lie about the six feet, but sorry if I did not understand, which is the reason why he brought back the customer because he thought he was doing it correctly. He again said that if he did something wrong please tell me, but instead also show me and tell me whatever she wants me to do.

Mr. Durkin asked the board members if they had any further comment. Sheena asked about the six feet rule, if that was the rule for all of the mall. Ms. Cameron explained that different interactions have different requirements, so it is not the same for all businesses at the mall, but said that the prolonged interaction within that space would have to be considered close contact, and that he is performing a close contact personal care service when he is not licensed to do so. Sheena asked if the contact ruling does not apply once he has cosmetology license. Ms. Cameron replied that he would be allowed to do more once he is licensed, and would be under the oversight of the state cosmetology board. Dr. Mansberger asked Mr. Malool, before applying products to a client does he wash his hands? Mr. Malool said that he uses sanitizer, gloves. He told that the customers are comfortable, and he demonstrates with the products, they all have sanitizer, so he will put a small drop of the product onto his sanitized hand and then put on their face. Dr. Mansberger asked is he sanitizing the area where he would be putting the drop of product. Mr. Malool said yes. Mr. Durkin asked Ms. Cameron for recommendation. Ms. Cameron said that she suggests that the Board uphold the order, uphold the \$300 original fine, and uphold the additional \$1,000 fine, and to have the store and the kiosk remain closed until licensed for direct personal care. Dr. Mansberger said that once he has a cosmetology license, there is a more stringent list of requirements, change gowns, face shields, correct? SC stated it

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depends on nature of the business, but added that is fair to say the requirements are more stringent. Dr. Mansberger said she did not see gloves in the video. Ms. Cameron said that gloves are required, but in the video it does not look like the female employee was wearing them. Mr. Carli made a motion to reinstate the \$300 fine from last month, to uphold the \$1,000 fine for the second offence, and uphold the order to cease and desist until they are properly licensed. Dr. Mansberger agreed, seconded the motion, and said that they should not be applying product until they have a cosmetology license and have an understanding of close contact regulations and a very clear understanding of all of the safety requirements. Mr. Durkin asked if the Board had any further discussion. All agreed that they did not. A Roll call vote was held, and all three Board members voted affirmatively to uphold the order, and to reinstate the \$300 penalty from the first offence and an to uphold the \$1,000 penalty, Sheena asked about if the state coronavirus risk level is relaxed if this decision will be null and void. Mr. Carli replied no, the decision of the board will stand.

**Subject:** Hearing at request of B. Patel Re; Tobacco at Summit St Variety 145A Summit Street

**Discussion:** Mr. Durkin asked Inspector Suckney to speak. Mr. Suckney explained that he did not find original violation and that Joyce Redford did, and asked Ms. Redford to tell the board what had transpired. Ms.Redford told that on September 29th she visited this location to conduct a routine inspection to make sure that businesses are adhering to the new state law and posting the new signage regarding restricting the sale of menthol, mint and wintergreen tobacco products. She told that she had walked in and introduced herself, told the manager the purpose of her visit, and walked behind the counter. She saw that they had Blue cigarettos, which is considered a concept flavor, but is still a prohibited flavored product. She explained that on the new laws about mint and menthol products they were being somewhat gentle and unless the oversight was an egregious one, and if a product on the new prohibited list was missed they were trying to go easy on the business owners. In this case, this is a product has been restricted in Peabody since January 1, 2019. She told that she had also sent out a letter to 404 businesses in our area as a reminder of the new laws state starting on June 1, and reminded that that the new regulations included fines which would be significantly higher than the fines issued by communities in the past. She told that she had also created and distributed a tool for use by business owners highlighting items not allowed to be sold, which was adopted for use by the state. She said that even with all of that work, she still went in and found the flavored product on display, something that should not have appeared on the shelves over a year into the original flavor restriction. Mr. Durkin asked if the members of the board had any questions. None were put forth. Mr. Durkin then told Mr. Patel it was his opportunity to speak. Mr. Patel could not be heard through his computer microphone, so he was asked to call in by phone. While waiting Mr. Carli asked about violation history of this store. Ms. Redford said that she would look it up. Mr. Patel called in was able to be heard. He told he had ordered stock on Sept 16<sup>th</sup>, and simply asked his distributor if there were any new products available for him to sell, and the lady told him to try this new cigar. He said that she said that everyone is selling it and told him to try it, so he

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ordered one box. He added that usually he checks on these type of items, but this time he just trusted the cigarette company. He told that Joyce then came on September 29<sup>th</sup> and told him he cannot sell this product, so he took it out right away from the sales floor and sent it back to cigarette company. He apologized for that, saying that he didn't mean to sell a flavored one. Ms. Redford reminded the Board that it is the business owner's responsibility to know what products they carry and if they are allowed. She added that under state law they are required to have documentation from the manufacturer saying the product is not flavored. Mr. Patel said that he trusted the lady. Ms. Cameron said in her opinion, it is the responsibility of the tobacco permit holder to be responsible and to understand what products they can sell. The language in the law says *shall* be fined not *may* be fined, so there is not much leeway in state law. Ms. Redford confirmed this. She also added that Blue is not a new product but has been around since before our local flavor restriction went into effect. Dr. Mansberger said she answered the question she was going to ask, if it was a new product do the manufacturers regularly update the lists, but it really wasn't a new product so it was beside the point. Mr. Durkin said he believes the hearing is looking to uphold the \$1,000 fine. He asked Mr. Patel if there is anything he hadn't said that he wanted to. Mr. Patel said that he only wanted to say he didn't mean to break the rules, and that he had trusted the company, that he has been in the business 18 years, has a good record. When Mr. Patel was done speaking Mr. Durkin closed hearing. Dr. Mansberger made motion to uphold the \$1,000 fine, and Mr. Carli seconded motion, Mr. Durkin asked if there was any further discussion on this matter. None was presented. A roll call vote was held and was unanimous to uphold \$1,000 fine. Mr. Durkin said that he's sorry but explained that the board has upheld the fine. Mr. Patel asked to whom he should make out the check. Ms. Cameron said made out to City of Peabody and mailed to Health Department.

## **ENVIRONMENTAL UPDATES**

**Subject:** Rousselot

**Discussion:** Ms. Cameron told that she had heard from state and Rousselot had received another fine. She reported that there had not been a lot of odor complaints, but told that this was still a work in progress.

**Subject:** Review of minutes

**Discussion:** Motion to accept and approve minutes of October 29 meeting was made by Mr. Carli, seconded by Dr, Mansberger. A roll call vote was taken, and all unanimously approved.

**Subject:** Covid-19 Update

**Discussion:** Ms. Cameron told that Peabody is in the red again, and told that her staff's caseload is skyrocketing, and that the average daily incidence rate is 35 new cases per day, and that today there were 37 new cases, so they are seeing skyrocketing numbers, Ms. Cameron told that when

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things began to be bad back in March, people were on lockdown, so people had fewer contacts, whereas now people are out and about more in the world and in some cases are having contact with 20 or 30 people. She reported that things had gotten to the point that the department has had to make the difficult decision to allow the state contact tracing collaborative CTC to pick up many of our cases for contact tracing. She told that her nurses continue to track our student cases, and also kept anyone who is a government employee and first responders, so we are prioritizing, but the remainder of cases are being tracked by the CTC, which is not ideal, since there are great delays. She also told of a case where the CTC didn't make a connection, when a child in a neighboring community who attends Peabody schools tested positive but the CTC never notified Peabody Board of Health, and the only way we learned was because the parent informed us, and it turned out that the child car pooled and some of those people were also found to be positive. The CTC will not share info across town borders, won't share info about workplace or school exposures. She told that the situation is flexible, and as soon as the caseload is more manageable they can take it back to handle more of the tracking locally. We have had a lot of cases in our schools, but in most cases the infection was contracted outside the school, only in one and maybe one other case was it contracted in the school setting., which shows the protocols are effective. The holidays are going to be difficult, and they predict seeing six weeks of really high case numbers, which is where we are now. She told that they are starting to see an uptick in nursing home cases again. She explained that things had been bad there in the beginning but had stabilized, but now numbers are going back up. In the earlier days of the pandemic Nursing homes represented 30% of cases, but now they represent 25%, but they still account for 86% of Covid deaths. She also told that the Governor has changed the metrics, so we are not just looking the daily average , but looking at percent positivity of test results, and it was not a surprise that we went red. She added that Governor had also made changes to the quarantine requirements. She reported that the state is not incorporating any inputs from the local Boards of Health, and that they are also not informing us in advance that changes are being made. She said that it is disheartening to not be told in advance of these changes, because getting the word out on the requirements is difficult, and then all of that work must be redone when the changes happen. She said that she doesn't disagree with the changes, but none of that data behind the protocol changes has been shared, so when staff are trying to explain to people what is going on, they cannot explain the science behind the policy decisions. She told that she has written a letter to the Governor about this. She told that a lot of public health directors are very discouraged about the apparent lack of input and lack of respect for their profession. She said that they are seeing an uptick in cases because people are fatigued, are moving about more, and also because people are not trusting us because we can't explain the rationale for policy decisions, and this undermines compliance with the public health messages.

She told that there are a few new pieces of data included in the Board's packets, and told that they are starting to report on people who are participating in a group setting. The other information they will be updating weekly will be summary of school cases.

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Ms. Cameron told that her department had run a covid testing event, which tested 352 people and was held at St. Vasilios church. She reported that of those tests only three people had tested positive. She also told that she had used up the rest of the Grant for testing from Lahey/JB Thomas. She said that she had seen info on people waiting hours at state-sponsored testing sites and being turned away, and said that she hopes that now with Peabody rising into the red zone that there will be more testing put in place by the state. She also reminded that there will be holiday pressure, and systems will be put to test due to people travelling over the holidays.

Ms. Cameron showed a tool created by Public Health Nurse Chassea showing patterns of interactions and quarantines. She told how the superintendent asked to use this too, and invited Chassea to show the tool at a recent training.

Mr. Durkin asked Mr. Carli how they handle the issue of staff overlap in Everett, and asked if they use a pod system? Mr. Carli said that in Boston they limit overtime to only the house to which you are assigned, but Everett is too small so they can't do that but said that they ask their firefighters not to swap shifts if possible. He told that his department works closely with the Cambridge Health Alliance so his firefighters can get in for testing quickly.

Ms. Cameron reported that testing for the general public was not as widely available as is needed. She told that her staff is out straight, and told how today Chassea had 25 voicemails, and of those, 23 were from business who needed investigation due to a positive case in a worksite. Also told she had been on phone with state about one worksite with 105 employees which had 25 cases. They were going to go there tomorrow to discuss protocols, but the meeting was cancelled because they first need to do professional cleaning. She told that some employees did not observe protocols and went to work, people cannot be expected to go wait in line for several hours to get testing. She added that the state changes sector specific protocols frequently, has reduced occupancy, and set a curfew. She told that she has some made recommendations to the mayor and superintendent, and since we need to keep it a priority to keep our kids in front of teachers. She told that some people had some concerns about fall sports, and now we are going into winter sports season, and one kid can put an entire team in jeopardy, two kids can mean that you'd have to quarantine two whole teams, so in her opinion, if our priority is to keep kids in person school, it has been her recommendation to reconsider the sports season. Dr. Mansberger said she agrees.

**Subject:** Rodent Complaints

**Discussion:** Ms. Cameron explained that, since the inspectors are not able to enter the data into their tracking system, the numbers of rodent complaints in that system's report is not accurate. She said that the Health Department is still getting a lot of rodent complaints.

## **CODE ENFORCEMENT UPDATES**

**Subject:** Nuisances

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**Discussion:** reviewed

**Subject:** Covid Violations

**Discussion:** Reviewed

**PERMITTING UPDATES**

**Subject:** List of Permits Issued October 2020

**Discussion:** Reviewed

**PUBLIC HEALTH NURSING UPDATE**

**Subject:** Permitting Update -Communicable Disease Report/ Update on Flu Season

**Discussion** Reviewed. Mr. Durkin said that the flu season is coming. Ms. Cameron said that her department had held their last Flu clinic, adding that she doesn't think they will hold another. Dr. Mansberger asked about the case of Listeria on the report, and asked if they found the source, adding that there was a notice about deli meat, recently. Ms. Cameron agreed that she had heard about that as well. Mr. Durkin noted the listed Hepatitis cases.

**Subject:** correspondence

**Discussion:** reviewed

**Next Meeting:** Thursday, December 17, 2020 at 4:30 p.m. Meeting was adjourned at:  
6:18 p.m.