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CONDUCTING BOARD OF HEALTH **“CEASE AND DESIST” APPEAL HEARINGS**

Amended 2/11/22

First, all appeals hearings must abide by the Massachusetts Open Meeting Law. Any member of the public must be able to see and hear the hearing.

Second, an appeal hearing can be part of a regularly scheduled board of health (BOH) meeting or can be held on another day/time, but you must make sure that regardless of the BOH’s choice, that it be properly posted. It is fine to have multiple appeals hearings at the same meeting.

Third, the BOH chair or their designee should call the meeting/hearing to order, introduce the BOH members, the health director/agent/inspector and, if applicable, the tobacco control director to those in attendance. If there are multiple hearings at the meeting, the Chair/designee should explain that each establishment will have a separate hearing. A motion should be made, and the board should vote to open the first hearing.

The BOH chair/designee should introduce the first hearing and the retailer. Ask them to introduce themselves, and if appropriate, introduce their attorney. Remind them that the question before the Board of Health is, did a sale take place (or did a violation of state law take place.) Remind them if a sale took place (or a violation of state law occurred), the amount of the fine is mandated by state law, as well as a permit suspension for a first sale (if that is the violation alleged). These are non-negotiable.

The BOH can choose to set a time limit for each retailer or not, but it should be decided upon before the hearing starts.

The Chair/designee should turn the hearing over to the tobacco control inspector or the health inspector to begin their testimony. The inspector should have on hand the following:

- A copy of the inspection report;
- A copy of the Correction/Cease and Desist Order;
- The tobacco product tagged and labelled as evidence;
- A copy of any previous violations; and
- Any applicable POST information if the municipality uses this system; and
- A copy of 105 CMR 664.040 and .045.

The inspector’s testimony should include the following:

- Time and date of check;
- Product purchased;
- Procedure followed;
- If a multiple offense, when the previous offenses occurred;
- Fine issued and permit suspension length in question;
- If the retailer paid the fine but questions the suspension only;
- If the retailer has an open legal appeal before a court.
- The inspector should review the penalties required in state law as they relate to the specific retailer and any relevant local penalties. This review should include the number of suspension days that would be required.

When the inspector completes their testimony, the Chair/designee should ask the retailer/retailer's attorney to testify and remind them that the only question before the BOH is whether a sale took place to someone under the age of 21 or whether a violation of state law occurred.

Those listening to the case should not comment on the retailer's testimony unless the comments clarify a misstatement of facts.

At the end of the retailer's testimony, and any clarification testimony from the inspector, the Chair/designee should ask for a motion to close the hearing. The board should vote on the motion.

The BOH may now entertain discussion among members of the board. The public is not permitted to comment. The inspector may comment if asked to do so by the BOH. After discussion, a member of the board may:

- (1) Move to affirm or dismiss the penalty; or
- (2) Move to take the matter under advisement for a vote at a later time.

If affirmed, a written notice must be sent to the retailer confirming the decision of the board and the penalty assessed. If taken under advisement, set a deadline on which the retailer must get any clarifying information to the BOH.

The Chair/designee should move to open the next hearing.