

Charlemont Board of Health

Public Hearing Minutes

Re: 4 Family violation of “An Act to Modernize Tobacco Control” and 105 CMR 665.000:

December 6, 2021, 1:00pm

157 Main St, Charlemont (in-person)

additional attendees via Zoom

Present, Charlemont Board of Health:

Doug Telling, Chair

Mae Tanner, Member

Meredith O’Leary, Franklin County Tobacco Coalition Coordinator

Melissa Roberts Cody, Franklin Co. Tobacco Coalition Enforcement Officer

Randy Crochier, CPHS Program Manager/FRCOG Regional Health Agent

Lisa Danek Burke, FRCOG Health Hgent

Kurt Schellenberg, FRCOG Health Hgent

Guests Present, 4 Family:

Vivek (Vick) Sharma, business owner

Amyn Merchant, business owner

Absent: Rob Lingle

Agenda:

1. Tobacco Violation: Notice reading & ground rules
2. Guests state position
3. Board of Health response
4. Tobacco board response
5. Other response(s)
6. Close meeting
7. Board decision
8. Adjourn

NOTICE OF PUBLIC HEARING

Charlemont Board of Health

The Charlemont Board of Health will hold a public hearing on Monday, December 6, 2021 at 1:00 pm at Charlemont Town Hall; 157 Main St., Charlemont regarding a violation by 4 Family Convenience of the state law entitled “An Act to Modernize Tobacco Control” and 105 CMR 665.000. The violation is selling a tobacco product to a person under the Minimum Legal Sales Age.

Consistent with Governor Baker’s temporary modifications to the Open Meeting Law, G.L. Ch. 30A, §20, the hearing will be held in person (limited to participants in the hearing) and via **Zoom Meeting**, to the greatest extent possible. **To join the meeting, go to: <https://us02web.zoom.us/j/8974777682>. Meeting ID: 897 477 7682. Phone: 1-646-558-8656 followed by 8974777682#.**

In person attendance is limited to participants in the hearing only, but every effort will be made to ensure that the public can adequately access and participate in the proceedings via this conference call.

Posted: 12/2/2021 CFH

1. Crochier proposed that Tobacco Coalition state position first
2. Telling moved and Tanner seconded
3. Tobacco Coalition Enforcement Officer Cody reviewed Coalition's procedure surrounding conducting youth compliance checks utilizing trained youth officers (YO), noting that the sole point of the check is to discern as to whether or not a tobacco sale was made to a minor. Cody continued relaying the course of events during the compliance check on behalf of the Charlemont Board of Health Tobacco Control Program, which took place on Sunday, November 21, 2021, at approximately 12:33pm. Cody reported that the YO was able to purchase a pack of cigarettes costing \$12.44, with the YO returning \$7.56 in change to Cody. YO described the store clerk as an older female, short in height, wearing a darkened coloured t-shirt. Cody verified sequence of events as YO entered store with \$20.00 in cash, left store with tobacco product and \$7.44 in change. Product was "bagged & tagged," and delivered to O'leary. All documentation was completed as required. Cody added that YO reported that the store clerk never asked for the youth's age or ID, and never even spoke to the YO: no "hello" or "goodbye"; clerk did not speak at all during the course of the transaction. The YO did not have an idea when entering the store.
4. 4 Family response by Merchant, introduced business partner Sharma. Merchant stated that he spoke to the cashier about the incident, but did not know that the compliance check had occurred until 5 to 7 days prior to the Dec 6th hearing; Merchant claimed he has "no good recollection" of this event and further stated that the cash register system prompts for ID check when a tobacco product is scanned. Reported that "cashier did enter customer's/YO's date of birth (DOB) and entered the sale. Sharma noted that the cashier "has been 10 years employed" at 4 Family and that this cashier "always passes" compliance checks; further stated that they [the owners] have been 20 years community members and employees are "well trained"; reported that cashier was not able to recall the event. Merchant noted that the cashier could not attend the hearing. Sharma states that \$1,000 is "outrageous" [in reference to fine amount stated in the violation letter]. Sharma goes on to note that their employees need to pass tests in other towns; could we work together to train to put the best system forward? Noted also that hypothetically, a person could sabotage a business. Merchant states that the employee should also be held responsible, not just business owners, but that this employee "has a good, clean record." Sharma noted that they [the owners] are shown no appreciation, referring to prior "sting operations" and passed all of them; further that the \$1000 fine is "gonna come out of the community; we are working class people that work and are not a big operation. We can work together to do something better, something to train." Merchant states that to penalize them the \$1000 won't help them at all; requests help with training so employees are "workable," further stating that more signage with "check ID" be obvious for employees for reminders. Sharma asks for the number of "stings" have happened before?
5. O'Leary states that 'youth compliance checks' are not "stings"; not setting up to fail; reported that can check for the past 5 years, excepting the pandemic/lockdown months. FDA also conducts youth compliance checks yearly. O'Leary confirmed no prior violations at 4 Family.
6. Merchant stated his thanks.
7. Danek-Burke reported sequence of compliance check to business owner violation: Compliance check occurred on Sunday, November 21st, 2021; violation was reported to FRCOG Monday, 11/22/21. Violation letter (hard copy) was hand-delivered to 4 Family on Friday, 11/26/21. Noted that they would have liked the delivery to have occurred sooner, but was delayed due to Thanksgiving holiday.
8. Crochier noted a clarification that compliance checks regarding alcohol sales are also conducted regularly, but are totally separate from tobacco.

9. Merchant requests consideration that as retail owners, “many things have to be considered with all the rules and regulations on owners and employees making minimum wage; states they have “many hardships.”
10. Sharma stated that the country’s small businesses are struggling and penalizing \$1000 is not acceptable; requests working together and stated that they had “done our part”; fine should not happen as \$1000 “will hurt us, simple”; asked for “some workable solution, maybe training through another organization?”
11. O’Leary asked Merchant if there is a way to bypass the register system, as in can a sale be made by not scanning an ID?
12. Merchant stated that their system has no scanning ability; cashier must enter DOB when screen prompts cashier to do so.
13. 4 Family owners stated that they have said their “piece”.
14. O’Leary noted that upon hearing that, recommends owner not to dispute the violation as further violations will place higher financial penalties with more long-term consequences. Noted further that as of June 2020, state law sets violation fine amount and suspension; some boards have upheld violations but did not dismiss fine; stated that 2nd violation is a \$2000 fine and a 7-day suspension of tobacco sale license. Noted that as boards “we can be sympathetic to small business,” noted that she agrees with a training program at the community level; suggested a video module-based training with full store participation.
15. Sharma requested date of state law passage and when they [the owners] were notified of the law in effect.
16. O’Leary stated that compliance violation laws were passed in 2019 and were in full effect June 2020. Notifications of such were as follows: Mass mailings (both USPS and email) went out May 2019, 1:1 visits with business owners conducted on 10/16/2019, 10/14/2020, 9/19/2021 for follow up.
17. Merchant noted that he did not have any of the 1:1 meetings at 4 Family. Requested training & certification, like SafeServ, also hold cashier accountable. Further stated that he met Crochier one time in Buckland; corrected to mention a 1:1 with Glen Ayers two to three years prior. Finally noted that he [Merchant] is not at hearing to promote sales to minors, but that the owners’ “clean record” should clear or reduce fine.
18. Crochier referred owner to CMR 665; whether or not [owner] is in agreement, the statute clearly states that the retailer is responsible, *not* the employee. Crochier further noted that one violation had occurred in Charlemont during the past year and the process was duly followed.
19. Merchant reiterated that there “should be” some kind of responsibility on the cashier.
20. Telling noted that it is the retailer that is penalized, and it is the employer’s prerogative to hold their employee accountable.
21. Crochier stated that there are no provisions for employees.
22. Cody addressed board of health and clarified that the other violation in Charlemont was upheld; further that when looking at the owners’ description: A very seasoned employee should recognize responsibilities *more* and held to a higher standard *because* they are a long-time employee; however, YO was *not* asked and also put in *some appropriate but false* DOB for purchase to have rung through; Cody “applauds” business owners for wanting to figure out an approach to community-based training, but that this does not avail store of obligation to comply. Cody stated that she does not recommend violation and/or fine to be dismissed.
23. O’Leary noted that HMOA offers free retailer training for employees and is support for retailers to train their employees about compliance and “how-tos”; training has been in place for over 2 years.
24. Tobacco Coalition stated no further comment.
25. Tanner motioned to close the hearing at 1:37pm; Telling seconded close of the hearing. Passed 2-0.
26. Charlemont Board of Health comments followed at 1:38pm:

27. Telling stated that for equity's sake, violation and fine should stand; further noted that the Board recognized the willingness for cooperation and voted to uphold the fine, although voted to dismiss the suspension of tobacco sales license. Upholding the fine and violation is a clear statement that Charlemont does not condone tobacco sales to minors. Stated motion to uphold at 1:45pm.
28. Tanner seconded motion directly after. Passed 2-0.

Telling motioned to adjourn 4 Family hearing and Tanner seconded adjournment. Passed 2-0 at 1:46pm.

Final remarks, post-adjournment:

1. O'Leary requested that the Board send notification of paid fine to Tobacco Coalition; fine due date reported by end of January 2022.
 2. Telling affirmed request.
 3. O'Leary confirmed receipt of Board's previous [separate business] notification of received fine.
- End zoom video 1:48pm.*

These minutes are not official until signed

Document Reviewed
12/6/2022

Agenda and hearing notice for 12/6/2022