



BOARD OF HEALTH

~ MINUTES ~

Thursday, January 8, 2025

Meeting 131 Pleasant St Trailer Room B, Nantucket MA, 02554

This meeting was held via remote participation using ZOOM and YouTube.

Called to order at 4:00 p.m.

Staff in attendance: Jerico Mele, Deputy Director of Health and Human Service;

Remote Staff: John Hedden, Chief Environmental Health Officer; Tomeka Gary, Public Health Coordinator; Heather Hudson, Public Health Inspector, Will Droheiem, Public Health Inspector

Members attending: Ann Smith (chair), Meredith Lepore, James Cooper, Thomas Dixon

Remote Members: Kerry McKenna

Public Participant: Cheryl Sbarra, Esq., Executive Director and Senior Staff Attorney for MHAB; Michael R. Hugo, J.D., Director of Strategies and Government Relations for MHAB

I. PUBLIC ANNOUNCEMENT

II. MASSACHUSETTS ASSOCIATION OF HEALTH BOARDS EDUCATIONAL TRAINING FOR BOARD OF HEALTH

Discussion:

Legal authority of boards of health

- Massachusetts Supreme Judicial Court held that board of health regulations stand on the same footing as state statutes, local ordinances, and bylaws
- Courts make all rational presumptions in favor of validity of board regulations and only strike them down when someone proves absence of any conceivable ground for upholding them
- Courts won't substitute their judgment for the board's judgment or weigh evidence—only overturn decisions if clearly arbitrary or capricious
- Cheryl explained that federal law sets minimum public health standards but delegated authority to states, and Massachusetts legislature delegated authority to local boards of health through chapter 111
- Protection of public health can be at expense of individual privacy rights or business rights, requiring a balancing test
- Boards should consider risk of harm, whether vulnerable populations are affected (youth, elderly, those with special needs), and whether issue is truly public health or a private dispute between neighbors
- Boards should assess whether proposed action is fair, effective, and enforceable before taking action

Nuisance law and enforcement

- Chapter 111, section 31 requires boards shall examine all nuisances, sources of filth, and causes of sickness that may be harmful to public health
- Generally accepted farming procedures are exempt from nuisance law (not best practices, but generally accepted procedures)
- Cheryl presented Deerfield case where property owners claimed a piggery was exempt, but court found it was actually a dump with abandoned Boston cab doors and a bus with a tree growing through it
- Boards determine in their opinion whether something is a public health nuisance based on criteria including whether condition could spread to neighbors, cause communicable disease, cause trauma or injury, or expose public to hazardous substances
- If board determines something is a nuisance, they issue cease and desist order demanding abatement within **24 hours** or reasonable time with fines up to **\$1,000 per day**
- Municipality can abate nuisance at owner's expense and put lien on property if owner doesn't comply
- Goal is compliance, not punishment—if someone fixes issue after a phone call, that's preferred over fining them

Noxious trades regulation

- Noxious trades law allows boards to regulate businesses that could hurt neighbors' property, which is unique in public health law
- Common examples include fat rendering plants, auto body shops, and asphalt plants
- Boards can prohibit a business from coming to municipality, assign specific sites, or assign conditions like limiting hours of operation

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- Cheryl cited recent case where Yarmouth Board of Health fined Cumberland Farms for selling flavored tobacco product labeled "jazz"
- Court upheld decision based on evidence including Google search and product advertising showing it had "unique sweet flavor"
- Court stated boards of health and agents use smell all the time to determine violations in food code, pool code, spoiled milk, and mold
- Recent appeals court case upheld board decision ordering asphalt plant to stop operations causing odors and fumes beyond plant boundary

Inspection authority and enforcement procedures

- Staff conduct either periodic or complaint-driven inspections with goal of compliance, not punishment
- If refused access to residence or establishment, inspectors cannot break down door or call police—must obtain administrative search warrant from court
- Enforcement escalation: first ask for voluntary compliance, then issue civil ticket or cease and desist order, then after hearing can suspend, revoke, or not renew permits
- Final enforcement options include filing application for criminal complaint or complaint for preliminary injunction, but court system is expensive and time-consuming
- Cheryl quoted Judge Kaufman: "The judicial system is the most expensive machine ever invented for finding out what happens and what to do about it"

Open meeting law fundamentals

- Open meeting law requires **48 hours** notice exclusive of weekends and holidays prior to convening
- Required posting elements: date of meeting, time, place, list of topics reasonably anticipated, and date and time of notice posting
- If Internet system crashes for more than **6 hours**, all posted meetings are voided and must be reposted
- Deliberation is oral or written communication through any medium including email between or among a quorum on public business within board's jurisdiction
- Serial conversations violate open meeting law—if board member **1** talks to member **2**, then member **2** talks to member **3** and relays member **1's** opinion, that's a violation
- Connolly exception allows public official to call individual board members for advice on decision they have sole responsibility for
- Site visits, social gatherings, and town meeting attendance don't require posting as long as members don't deliberate
- If attending joint meeting with another board, always post agenda for your board even if it's technically the other board's meeting
- Mike showed example of inappropriate text messages between mayor and chief operating officer during city council meeting that had to be produced in public records request

Public participation and comment

- Boards can close meetings to public comment but if they allow it, cannot restrict content of speech—only time, place, and manner
- Chair can divide available time equally among speakers (e.g., **30** people wanting to speak can each get **2 minutes** for **1 hour** total or **1 minute** each for **30 minutes**)
- Once public has floor, board cannot shut them down or tell them to stop talking—must allow them full allotted time
- Boards should avoid debate and avoid responding to comments during public participation
- If topic is interesting and warrants board action, add it to future agenda rather than resolving during public comment period
- Any member of public can record meeting but must notify chair they're recording and cannot be obstructive with recording equipment

Public records law compliance

- All books, papers, maps, photographs, tapes, and electronic records received or made by board members or staff are public records
- Email and text messages are public records
- Mike strongly recommended board members set up separate email account for board business (e.g., JohnSmithBOH@gmail.com) to avoid having personal computer or phone seized for examination
- Don't send emails or texts during meetings—people monitor YouTube postings of meetings and request text messages sent during specific meetings
- If someone hands board member document or photograph during meeting, board must retain copy of anything looked at during meeting
- Town can recover costs for expensive duplications like large plans, and collaborative has plotter in Oak Bluffs for printing

SAFE 2.0 legislation and requirements

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	• Special commission on local and regional health issued report in 2019 finding that Massachusetts' 351 separate boards of health system was broken • SAFE 2.0 legislation enacted to make boards more effective and efficient with lens of equity for underrepresented communities • Mandatory standards include inspections, epidemiology, permitting, and education/training/credentialing • Boards must implement and comply with standards individually or through cross-jurisdictional sharing • Annual report required by August 31 each year describing how department complied with standards • Commissioner can lift state public health funding and restrict future funding for noncompliance • DPH and DEP must provide educational opportunities, technical assistance, and credentialing free of charge • Islands collaborative working on epidemiology with Leah Hamner and Patrick Reynolds, starting with ticks and expanding to other areas • Food Code Pro electronic database implemented through collaborative as direct benefit of SAFE legislation • Training for staff will now be done regionally in Barnstable, Dukes, and Nantucket counties instead of requiring travel to Western Massachusetts • Senator Cyr and Representative Fernandes were champions of legislation and helped get it across finish line MAHB has scheduled 4 trainings in 2026 for board members, with closest one in Plymouth on March 21—state may cover hotel and expenses
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X. ADJOURMENT	
Discussion:	Motion to adjourn 5:20 pm (Motion by: Dixon) (Seconded by: Lepore) Carried 5-0//Smith, Lepore, McKenna, Dixon, Cooper(Aye)

Submitted by: Tomeka Gary