

ERIE COUNTY BOARD OF HEALTH

MINUTES

MAY 2, 2023

PRESENT: Robert Free. Vice President, Food & Beverages, Bisons
Baseball/Canalside/Outer Harbor, Chairman, BOH
Dolores Funke, P.E.
Marilyn Tuberdyck
Diane Loomis, DNP, FNP
Maureen Montgomery, M.D.
Michael Merrill, M.D.

ERIE COUNTY DEPARTMENT OF HEALTH

Gale Burstein, M.D., Erie County Commissioner of Health
Jennifer Delaney, P.E., Director, Erie County Dept. of
Environmental Health
Thomas Muscarella – Environmental Health
Jeffrey Jurewicz – Environmental Health
Peter Tripi – Environmental Health

I. REVIEW OF MINUTES FROM JANUARY 17, 2023 PUBLIC HEARING/BOH MEETING

Rob Free asked if everyone had a chance to review the minutes, the group had and a motion was made to approve them as written, the motion was carried.

II. CHAIRMAN'S NOTE REGARDING BOARD VACANCIES

There was some discussion regarding BOH vacancies. Rob Free indicated that he would reach out to the Mayors of the cities involved.

III. UPDATE ON THE FOOD POLICY COUNCIL

Rob Free asked Danielle Rovillo of the FPC for an update. As the FPC is transitioning from under the auspices of the BOH into another

department. She went on to say that the FPC has had a long journey trying to hire a Public Health Fellow to serve as a Coordinator to organize everything from the County appointed roles and the volunteers; and all the work that they are doing. This process is finally coming to a close as a candidate is scheduled to start next week, Leanne Novak will be joining coming from the University of Buffalo Food Lab so that she is well suited for the position. She will be located in the Office of Health Equity. The Deputy County Executive, Lisa Chimera was involved in the job description for this Fellow and will be supporting work that the Office of Health Equity does; and that Live Well Erie does in making connections to the local food action plan that the Food Policy Council produced. Also the strategic plan that they are currently operating under. They have a draft work plan sent out which is being reviewed. It will also support the work of the Department of Environment and Planning's agricultural farmland update the NYS plan. This will be bringing multiple divisions together and seeing where to check off boxes in the plan. As far as restructuring with the County at the end of last year the members voted to reposition themselves from the grey area where they currently sit underneath the BOH to a different position within the County, where they are able to advocate for policy change and interject more directly and appropriately. The executive committee of the FPC meets regularly with the Deputy County Executive for feedback and are currently in the process of determining where the best fit is. Whether it is asking for an executive order or resolution and becoming more of a task force or going in a totally different route. They are still in the exploratory phase of this.

The goals of this change would allow us to provide feedback and give better position on food related issues and give them the ability to respond in a way that is more recognizable and potentially have a dedicated staff person. The Public Health Fellow is limited to two years maximum. This might help the case for a civil service position related to the FPC. Currently there are three county staff that give about ten hours of time monthly to the FPC; so this adds another person on to coordinate all these efforts. They are also planning on getting on the schedule to present to the Health and Human services committee of the Erie County Legislature to hopefully gain support for the repositioning through the legislature.

Dr. Burstein asked if they were going to ask the EC Legislature for a position. Danielle said that she is not part of the Executive Committee so

that she is not fully involved but said that they are presenting their 2023 goals which the council worked on very closely developing for the upcoming year.

Dr. Burstein asked how they were integrating with Live Well Erie. Ms. Rovillo replied from her understanding looking at how the local food action plan integrates with the work that Live Well Erie is doing so that the new coordinator will be able to better document and celebrate the things the county is already doing that fills both of these buckets. Rob Free mentioned that this is high on the list of the Deputy County Executive.

IV. UPDATE FROM JENNIFER DELANEY, DIRECTOR, ENVIRONMENTAL HEALTH REGARDING TATTOO SECTION OF THE EC SANITARY CODE; TOBACO ENFORCMENT AND INSPECITONS

Ms. Delaney introduced Jeff Jurewicz. They are proposing updates to Article 22 that is the tattoo portion of the EC Sanitary Code. Mr. Jurewicz said that they are looking to update, modernize and react to some trends in the industry. Currently there are 189 tattoo shops and 389 tattoo artists under permit with the ECHD. About half of those shops are permanent makeup shops which used to comprise a much smaller portion of our regulated facilities in the past. So what we are looking to do is to try to become more gender generic, adapt to the changes and enhancements to the code are related to the permanent makeup shops. This includes specific blood borne pathogens training as a requirement; in the past we did not have a recommendation for this. In the industry standard most tattoo shops are already doing this, they are educating their staff on blood borne pathogens and having an annual training requirement. We are using the American Red Cross blood borne pathogen training for tattoo artists as the code standard; as there is specific language for the types of educational pieces that should be covered in the training, in case an establishment wants to develop their own training for their staff annually or have another company outside of the Red Cross. We will also be allowing for virtual training, as this is what the Red Cross is currently offering, a two hour on-line course. We are looking to set a standard that they have a good knowledge of why they need to protect themselves.

Mr. Jurewicz mentioned that they are also adjusting the expiration date for permits as the code was originally written in 1995 with December 31 as a set point for expiration for all permits. In other regulated programs a floating date is used, basically end of the month that they are approved to start operating. We would be looking to go to the same model for this. We also want to include an accommodation for mobile tattoo facilities, which we have had some interest from our other places over the past years. We have not given any approval for those. We would request that they have an affiliation with an existing brick and mortar shop and the artist that would be allowed to work in that mobile shop would be those already permitted under that particular brick and mortar establishment. So that it would be an extension of that shop. The shop would become the commissary for the mobile unit; and the specifics about hot and cold running water, water storage, potable water, discharge of the sewer for the waste water, set up of the interior surfaces, separation of the work area from any public areas etc. are all stipulated out in the proposed code. We also want to clean up some language and requirements for facilities, some facilities have wanted to use portable sinks instead of plumbed sinks in buildings that have existing plumbing which is unacceptable. However the code does not actually stipulate out that it needed to be permanently plumbed, we are attempting to clean this up. We want to make an accommodation for electronic records; currently the requirement is for paper records. Some establishments are vying for electronic records so they can scan driver's licenses or other forms of ID's right into the electronic record. The customers can digitally sign, they can e-mail the customers their aftercare instructions and all other things associated. We want to make an accommodation for electronic records retention. We also want to specify out the risk notification of patrons, we never had a specific language in the code regarding what they are required to tell the customers what the risks are, i.e. cellulitis and other complications that could happen. We would like to get this spelled out with specific things that they need to minimally advise their patrons of. As well as the potable water requirements as the code never specified that the water had to be compliant with part five of the State sanitary code, which it does for all other regulated facilities.

We also want to enhance the stipulations and the information in the code about pre-sterilized equipment as disposable equipment has become the industry standard. Our basic premise is that the artists need to comply with the sanitary code as is, however there are no special

dispensations for temporary tattoo locations. These are the basics of the changes there are some language changes that have been cleaned up and clarified. There were copies of the changes that were given to the BOH members with the changes indicated.

Jen Delaney said that NYS has been having conversations regarding putting together their own tattoo/piercing law for many years that has not come to fruition at this point and it does not appear to be moving. Mr. Jurewicz asked the BOH to review the changes and to e-mail comments moving forward. He thought that the goal would be to accept a resolution by the next meeting.

The second item was a proposal considering an addition to the sanitary code that would center around our tobacco enforcement program. The NYS law for clean indoor air that covers a lot of the underage sales for tobacco as well as not being able to sell vape products is lacking any real enforcement capabilities within the law itself. It relies on a third party agency to handle some of it, and they are not doing this. They have a thought on how to go forward with it and are presenting it here today to see if there would be agreement from the BOH if this is something we should pursue or not.

Tom Muscarella told the board that the first tobacco law went into effect in 1965 in the state. In 1989 the Clean Indoor Air Act was enacted, 1992 ATUPA (Adolescent Tobacco Use Prevention Act) grant to sales to underage individuals was enacted; 2002 it became illegal to ship tobacco products, vaping was added in 2020. 2009 USPS added that no one can ship tobacco products within NYS. This becomes a problem for the health department shipping for testing of a product, all kinds of paperwork to be able to do it. We would do routine inspections and take minors out to make purchases. There was a 1 ½ to 2 ½% sale rate so maybe 4 to 5 a year which is not a significant amount we would be able to handle them and move forward with our internal enforcements. Very rarely would we find any other violations. Come 2020 flavored vape products were banned, coupons, no sales in pharmacies which started about a year earlier in Erie County. Advertisements on display on the exterior within a quarter mile of a school are banned, and the age was raised to 21. Penalties were increased associated with all of these. All of these changes kicked in during the middle of COVID we went from having about 8-9 violations a year to 150. Our enforcement capacity

needed to be increased. Handouts given to the BOH members were a summary of numbers and the last three years of final reports for the grant cycle. He went on to explain the chart. Products are being sold blatantly without disregard. They have caught on that the HD is looking for them and are now hiding and selling them when we send people in under cover. In an undercover operation done over the weekend 14 out of 18 sales were transacted. The flavor violations on a compliance inspection we find a quantity on the shelves, somewhere between 10 and 5,000 is the most we have counted. We initiate enforcement and charge \$10 for each one.

There are also a number of unlicensed facilities that we encounter. 229 unlicensed facilities that means that either the tobacco or vape facilities did not have a license from the NYS Dept. of Tax and Finance to be allowed to sell tobacco or vape products. Convenient stores, vape shops, we do not have any teeth in enforcing that it is all DTF, at best there enforcement is weak. Mr. Muscarella thought that if we could have some kind of permit or license that we issue we would be able to curb the unlicensed facilities, as one of our requirements would be all other licenses would need to be in place before ours is issued. We would then have the ability if they don't have a license from us or another agency to stop it immediately and ask Dr. Burstein to do a cease and desist immediately. Mr. Muscarella said that these establishments are selling products to kids, adults anyone out there who will sell. A lot of them are located near middle schools and are selling products to students. It is definitely a county-wide problem but is more prevalent in the suburbs than in the city. They are looking for the BOH's support in sanitary code changes or some other version to permit establishments

Peter Tripi told the group that there was one case where the establishment was issued a notice of hearing and at the time they were actually going to issue it they were selling vapes from behind the counter twice. They are knowingly and willfully selling to minors getting them easily hooked on vaping and nicotine. The Health Dept. is unable to access back rooms or storage areas, we can only control what is visible, this will be added to the requirements. Ms. Delaney told the group that they have spent months talking with NYSDOH about our abilities or lack thereof and options that we have we have been talking to our County Attorney and District Attorney we have some ability to put forth criminal charges however we need our District Attorney to be on board. We are

not there yet, we can do civil penalties, and there are advances that we are looking at outside of this.

The BOH members agreed that they would back an addition to the Sanitary code regarding this endeavor. Jen Delaney said that they will get started writing the addition and would probably have a document to review by Fall, with implementation by the first of the year. Tom Muscarella said that they will continue to do what they do, things will not go unchecked.

V. COMMISSIONER'S UPDATE

Dr. Burstein went on to say that Covid numbers were down. Testing is down as well as positive testing; however, looking at the waste water data the counts are down for our area and presently are in a declining trend. We are no longer in high transmission, we are in moderate transmission. We went from high to substantial to moderate. Health care facilities are no longer advised to mask as a mandatory rule per CDC. We no longer have access to the same level of SARS/Covid data, so we will not have denominator data, the same data for deaths so we are going to stop reporting on our website and refer people to the CDC and the State Health Department.

On Opioids, in 2022 we broke records for both the number of drug overdose deaths and opioid overdose deaths. Dr. Burstein said she would send out her Epi presentation of overdose deaths that she gave at the opioid overdose task force meeting. There were 377 total opioid overdose deaths. She went on to say that everything has fentanyl in it, 93% of our opioid overdose deaths are positive for fentanyl. 57% of our overdose deaths are positive for fentanyl and cocaine. In our demographic of our overdose deaths, victims are changing, it is becoming more diverse, we are seeing black/brown individuals, older individuals, middle aged people in their 40's, 50's and 60's. At the beginning of the epidemic it was more younger people, people in their 20's and 30's as they are starting in their teens and 20's. There now seems to be 2 camps, traditional opioid users and also users that believe they are using cocaine and not using opioids intentionally with fentanyl. This is difficult as they do not identify as using opioids, and do not believe their dealers would spike the cocaine with fentanyl. There are fentanyl test strips that we are giving out. We will have money from the

settlement funds to pay for some large advertising regarding the dangers of cocaine.

Another problem we are seeing is drug overdose deaths not involving opioids. In our previous high in 2016, only 6 or 7% of total drug overdose deaths were not with opioids in the toxicology screens; in 2022 it was 19%. We are seeing more cocaine more methamphetamine, another drug we are seeing is zylazine which is a veterinary sedative analgesic. However for humans it is very toxic, it eats away at skin. People are developing terrible lesions that grow very quickly and become infected. They develop gangrene which may lead to limbs being amputated. Systemically they bottom out with blood pressure, they go into a coma, cardio respiratory arrest. There is no antidote like there is with opioids, only supportive care.

With gun violence we are still trying to chip away. We have been working with the UB School of Social Work. They did an environmental scan to see what organizations are working on these issues; and we are studying to try and analyze and see what we can do to work with community partners.

VI. OLD/NEW BUSINESS

There was no old business. Under new business, Marilyn Tuberdycck asked if the Food Policy Council was still working on a farm to restaurant program. Rob Free answered that yes they were.

The next meeting was tentatively scheduled for September 12, 2023.

The meeting was then adjourned.

/mac/df