



State of New Jersey

DEPARTMENT OF HEALTH
OFFICE OF EMERGENCY MEDICAL SERVICES
PO BOX 360
TRENTON, N.J. 08625-0360

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

www.nj.gov/health

SHEREEF M. ELNAHAL, MD, MBA
Commissioner

July 10, 2019

Jeffrey J. Plunkett



**Re: Notice of Proposed Revocation
Health Officer License # 100464
Investigation # 2018-0801**

Dear Mr. Plunkett:

The New Jersey Department of Health (the Department) is statutorily charged with licensing health officers. N.J.S.A. 26:1A-38; Reorganization Plan No. 003-2005, 37 N.J.R. 2735(a). Once licensed, a health officer is responsible for performing certain duties and functions to ensure public health. See, e.g., N.J.S.A. 26:3A2-1 to -38. In furtherance of the objectives set forth in the statutes, the Department adopted regulations that govern the training, licensing, responsibilities and professional conduct of health officers and the circumstances under which a health officer's license could be revoked or suspended. See N.J.A.C. 8:7; see also N.J.S.A. 26:1A-43.

On September 27, 2018, the Department's Office of Local Public Health (OLPH) received a health officer licensing complaint alleging that you violated New Jersey public health laws because you do not annually inspect or certify that another entity inspects the Hamilton Township Animal Shelter & Adoption Center (the Hamilton Animal Shelter) prior to annually issuing a license for the facility to operate as an animal shelter. In response, OLPH opened an investigation into this matter.

Upon opening the investigation, OLPH confirmed that you have been licensed as a health officer since August 27, 1987. Thereafter, OLPH attempted to interview you in order to gather more information about the complaint. Specifically, from October 17 to November 5, 2018, the OLPH attempted to interview you. On November 5, 2018, you finally returned the messages left by OLPH staff. During the telephone conversation, staff explained the licensing complaint and requested documentation of Hamilton Animal Shelter's inspections for the ten years prior to July 1, 2018. You agreed to provide documentation, and Shereen Semple, Director of OLPH, sent you an email summarizing this request.

On November 7, 2018, you replied to Ms. Semple and wrote, "Mercer County Health Officers feel very strongly that...inspecting their own facility is a direct conflict of interest" and "the inspectors from Hamilton refuse to inspect our shelter due to this conflict which

has been confirmed by our Township Attorney.” Ms. Semple replied and asked you to provide the documentation previously requested. In response, you stated that no documentation could be provided because there had been no inspections of the Hamilton Animal Shelter as long as you could remember because having the Hamilton Township Division of Health inspect the Hamilton Animal Shelter was a conflict of interest. Ms. Semple asked why you continued to issue annual licenses for an uninspected facility without notifying someone of the problem or asking the Department for technical assistance. In response, you stated that “we have not self inspected [sic] our animal shelter as I have seen this as a direct conflict of interest.”

On November 13, 2018, you called Ms. Semple and said you located a report showing that an inspection of the Hamilton Animal Shelter was conducted by the New Jersey Society for the Prevention of Cruelty to Animals (SPCA) in 2017. Review of this single report showed the SPCA conducted a limited welfare check in 2017 after receiving a complaint about the Hamilton Animal Shelter on Facebook. A limited welfare check does not meet the criteria of an annual inspection required prior to issuing a license to operate, as required by N.J.S.A. 4:19-15.8 and N.J.A.C. 8:23A-1.2(b).

Through the investigation, OLPH also discovered that you admitted to the Department’s Veterinary Public Health Program staff, on more than one occasion, that the Hamilton Animal Shelter had never been inspected by the Hamilton Township Division of Health. You also admitted at the September 9, 2018 meeting of the Mercer County Health Officers that the Hamilton Township Division of Health never inspected the Hamilton Animal Shelter because you viewed it as a conflict of interest.

On February 20, 2019, the OLPH received another health officer licensing complaint alleging that you violated New Jersey public health law by failing to annually inspect or certify that another entity inspected retail food establishments within your jurisdiction prior to annually issuing licenses to the retail food establishments. The complaint further opined that the lack of annual inspections may have contributed toward the 2015 Hepatitis A case associated with Rosa’s Restaurant, which is located in Hamilton Township. In response to this complaint, OLPH also investigated this matter.

Under the investigation, the OLPH reviewed data from the internet-based Hamilton Township Restaurant and Food Establishment Safety Ratings Database on February 22, 2019. Searches based on calendar year, establishment name and establishment address showed most retail food establishments inspections were not current, and many of the most recent inspections had been conducted in 2017. In addition, the OLPH visited three retail food establishments in Hamilton Township to view posted food establishment licenses and inspection placards. In all three retail food establishments, OLPH staff observed a conspicuously displayed Retail Food Establishment License, as required by Hamilton Ordinance Township Code of Ordinances Chapter 235, and an accompanying Sanitary Inspection Report, as required by N.J.A.C. 8:24-8.12. The Retail Food Establishment License was signed by you as issued in 2019 by the Township of Hamilton Department of Health and included language certifying the establishment as having “complied with the requirements of an ordinance regarding the licensing and inspection

of retail food establishments.” However, the Sanitary Inspection Reports were not current. The Sanitary Inspection Report was signed by you and an Inspector and had been issued by the Township of Hamilton’s Division of Health in 2017 (two locations) and 2018 (one location).

On February 26, 2019, the OLPH contacted the Hamilton Township Division of Health, Office of Environmental Health Services, and asked if retail food establishments were required to have annual inspections. Staff in the Environmental Health Services told OLPH there was not enough personnel to inspect all the restaurants in Hamilton Township, so annual food safety inspections were not conducted prior to annually issuing retail food establishment licenses. Later this same day, you contacted Ms. Semple and admitted you did not ensure annual inspections of all retail food establishments prior to annually renewing their licenses. You also told Ms. Semple you did not have enough staff to keep up with the inspections and that your retail food establishment program had not been able to annually inspect all restaurants in Hamilton for “forty years.”

Additionally, OLPH confirmed that Hamilton Township Division of Health only conducted an inspection of Rosa’s Restaurant after the Hepatitis A-infected food handler from that restaurant was reported, despite statements made by you during a press conference on December 2, 2014. At this press conference, you advised the public that your health inspectors inspect every restaurant within Hamilton Township twice a year, to ensure that food establishments are sanitary and that workers are using gloves and practice good hygiene. However, this statement proved to be false as your online records, as well as your own admission, demonstrate that the restaurants in your jurisdiction are not inspected yearly, let alone twice a year.

The above investigative findings evidence that you grossly failed to discharge your duties as a health officer. Specifically, you failed to ensure that the Hamilton Animal Shelter was inspected prior to it receiving a license to operate. As set forth in N.J.S.A. 4:19-15.8(a), an animal shelter must obtain a license from the municipality where the shelter is located in order to operate. To obtain the license, the shelter must submit an application to the municipality along with written approval from the local health authority demonstrating that the shelter was inspected and in compliance with the local and State rules governing the sanitation of the shelter. The inspection requirements for animal shelters are reiterated in N.J.A.C. 8:52 Appendix Section II(a), which requires a local board of health to conduct a program that shall “inspect kennels, pet shops, shelters and pounds, to ensure compliance with the State laws and regulations prescribed by the Department...and ensure that licenses issued to these facilities are in compliance with existing laws.” See also N.J.A.C. 8:23A-1.2(b) (requiring the certificate of inspection to be issued by the local health authority). Moreover, N.J.S.A. 4:19-15.8(b) provides that animal shelter licenses expire every June, thereby requiring the shelter to submit a new licensing application and a receive an inspection annually.

The statutory and regulatory requirements for licensing and inspecting animal shelters are also set forth in the Hamilton Township Code of Ordinances. Specifically, Chapter 108-9(A) of the Township’s code states that “any person who keeps or operates or

proposes to establish a kennel, pet shop, shelter or pound shall apply to the Health Officer for a license entitling him to keep or operate such an establishment.” Hamilton Township Code of Ordinances Chapter 108-9(C) further specifies that “no license shall be issued until the proposed licensee submits a written statement from the Health Officer of the Division of Health that the establishment or proposed establishment complies with local and State rules governing the location of and sanitation at” the animal shelter.

Here, you failed to discharge your health officer duties for animal shelters as you failed to ensure that the Hamilton Animal Shelter was inspected and in compliance with the rules pertaining to the sanitation of the shelter prior to issuing it a license to operate. Indeed, you admitted that you never inspected the shelter, yet issued it a license to operate each year without regard to the condition of the shelter or its fitness to house and care for animals. Regardless of whether it was a conflict of interest for your department to inspect the shelter, it was your responsibility and duty as the health officer to ensure that the shelter was inspected prior to licensure, whether that was through an inspection by your own department or through a shared services agreement with another municipality for the performance of the inspection. Thus, OLPH finds that for a period of at least ten years, and likely longer, you did not ensure annual inspections of the Hamilton Animal Shelter prior to issuing a license for the facility to operate as an animal shelter each year. As such, you violated public health law by not fulfilling the requirements of N.J.S.A. 4:19-15.8(a), N.J.A.C. 8:23A-1.2(b), N.J.A.C. 8:52 Appendix Section II(a) and Hamilton Township Code of Ordinances Chapter 108-9 (A).

You also failed to ensure that the retail food establishments within your jurisdiction were inspected annually and prior to the issuance of a license to operate. Pursuant to N.J.A.C. 8:52 Appendix Section I(a), the local board of health is required to “conduct a retail food establishment program based upon State laws and regulations, including Chapter 12 of the State Sanitary Code and local ordinances, if applicable,” and “inspect retail food establishments...at least once a year.” N.J.A.C. 8:24-8.2(a) further provides that a local board of health is required to inspect a retail food establishment more frequently than once a year, if deemed necessary.

The Department’s retail food establishment inspection rules are restated in the Hamilton Township Code of Ordinances. Specifically, Chapter 235-4 of the Township’s Ordinances states, “no person shall operate a retail food establishment as defined in Title 8, Chapter 24, of the State Sanitary Code...without first having obtained a license from Township The Term of the License shall be for a period of one year, with all licenses to expire on December 31.” Chapter 235-5 of the Ordinances further provides that “no license shall be issued unless the Health Officer reports that the applicant conforms to all provisions of Chapter 24 of the State Sanitary Code.”

Here, you failed to discharge your health officer duties pertaining to retail food establishments by failing to conduct annual inspections of the retail food establishments within your jurisdiction before issuing each establishment a license to operate. In fact, you admitted that all the restaurants in Hamilton Township were not inspected, but you issued licenses to the restaurants anyway. As such, you issued licenses to retail food

establishments without ensuring that the restaurants were sanitary and safe for the public to patronize. Accordingly, OLPH finds that for an indeterminate period of time that likely includes several decades, you did not ensure annual inspections of retail food establishments prior to issuing the establishments their yearly licenses, thereby violating public health laws by not fulfilling the requirements of N.J.A.C. 8:24-8.2(a), N.J.A.C. 8:52 Appendix Section I(a) and Hamilton Township Code of Ordinances Chapter 235-4 and 235-5.

Pursuant to N.J.S.A. 26:1A-43 and N.J.A.C. 8:7-1.7, the Department may revoke a health officer's license if he or she violated any law relating to public health, violated any provision of the State Sanitary Code or violated any applicable local health regulation or ordinance. As set forth above, the findings of OLPH's investigation demonstrate that you violated public health laws, violated the provisions of the State Sanitary Code as well as violated local health ordinances. Because the violations are serious and place animals and public health, safety and welfare at risk, the **Department intends to revoke your health officer license.**

As set forth in N.J.S.A. 52:14B-11 and N.J.A.C. 8:7-1.7, you may request a hearing before the Office of Administrative Law to contest this proposed agency action. If you request a hearing, this agency action shall be held in abeyance until such time as a hearing has been conducted and a final decision has been rendered. Your request for a hearing on this matter must be submitted in writing and must be accompanied by a response to the charges contained herein. Your request for a hearing must be submitted within 30 days from the date of mailing of this notice and include **Control # 2018-0801**. If you choose to request a hearing please forward your request to:

New Jersey Department of Health
Office of Legal & Regulatory Compliance
P.O. Box 360, Room 805
Trenton, NJ 08625-0360
Attn: Ms. Tami Roach

Please note that this agency action shall become effective 30 days after this notice has been mailed to you unless you request a hearing. Failure to submit a written hearing request within such 30-day period shall result in forfeiture of your rights to a hearing.

Sincerely,

Shereen Semple, MS
Director, Office of Local Public Health

SENT VIA EMAIL, REGULAR U.S. MAIL AND CERTIFIED MAIL / RETURN RECEIPT
REQUESTED

C: Hon. Mayor Kelly A. Yaede, Chair of Hamilton Township Board of Health
Council President Jeffrey Martin, Hamilton Township Board of Health
Council Vice-President Richard Tighe, Hamilton Township Board of Health
Councilman Anthony Carabelli, Jr., Hamilton Township Board of Health
Councilwoman Ileana Schirmer, Hamilton Township Board of Health
Councilman Ralph Mastrangelo, Hamilton Township Board of Health