SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

947

FROM: Executive Office

SUBMITTAL DATE: June 8, 2010

SUBJECT: Response to the Grand Jury Report: Riverside County Community Health Agency – Department of Environmental Health

RECOMMENDED MOTION: That the Board of Supervisors:

1) Approve with or without modifications, the attached response to the Grand Jury's recommendations regarding Riverside County Community Health Agency – Department of Environmental Health.

2) Direct the Clerk of the Board to immediately forward the Board's finalized response to the Grand Jury, to the Presiding Judge, and the County Clerk-Recorder (for mandatory filing with the State).

BACKGROUND: On May 28, 2010, the Board directed staff to prepare a draft of the Board's response to the Grand Jury's report regarding Riverside County Community Health Agency – Department of Environmental Health.

Section 933 (c) of the Penal Code requires that the Board of Supervisors comment on the Grand Jury's recommendations pertaining to the matters under the control of the Board, and that a response be provided to the Presiding Judge of the Superior Court within 90 days.

90dayresponsef11CHA.EH05.10

FINANCIAL DATA			
	Current F.Y. Total Cost:	$ N/A	In Current Year Budget:
	Current F.Y. Net County Cost:	$	Budget Adjustment:
	Annual Net County Cost:	$	For Fiscal Year:

SOURCE OF FUNDS: | **Positions To Be Deleted Per A-30** ☐ | **Requires 4/5 Vote** ☐

C.E.O. RECOMMENDATION: APPROVE

BY: Jay E. Orr

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Buster, seconded by Supervisor Stone and duly carried, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone and Ashley
Nays: None
Absent: Benoit
Date: June 8, 2010
xc: EO, Grand Jury, Presiding Judge, CHA, Recorder

Kecia Harper-Ihem
Clerk of the Board
By: Deputy

Prev. Agn. Ref.: 3.09 – 05/18/10 | **District:** | **Agenda Number:** 3.10

☒ Policy ☐ Consent ☐ Per Exec Ofc.:

SPECIFIC FINDINGS AND RECOMMENDATIONS

Community Health Agency

Department of Environmental Health – Local Enforcement Agency (LEA)

FINDINGS

Finding Number 1:

DEH Policy 16, Department Policies, states in part: "All Department employees are responsible for reviewing and complying with policies." Newly hired staff in the LEA is not consistently being trained according to procedures set forth in DEH Policy 708, Staff Training Procedures. This training is mandated by the Riverside County DEH for newly hired employees and also required for existing personnel to ensure their skills remain current.

Response:

X Respondent agrees with the finding.

All staff assigned to this program will now be required to read and initial Policy 708 during their annual evaluations. Any new staff hired or transferred into this program will be trained in Policy 708 within 30 days of their start date. Further, this will also be required of all Program Supervisors and Program Chiefs.

Finding Number 2:

LEA personnel as required by Policy 708 are not consistently documenting training conducted.

Response:

X Respondent agrees with the finding.

Training was performed and documentation on file but not maintained or organized in a centralized location. All training documentation will now be organized and maintained in a central location. This will be the responsibility of the program supervisor; and compliance will be monitored quarterly by the responsible Program Chief and Deputy Director.

Finding Number 3:

Trainees are not consistently being administered written and oral tests as required by Policy 708.

Response:

X Respondent agrees with the finding.

Revision of this policy requirement is being considered. This requirement may now be unnecessary due to development of the program from 1999 to the present. For now, this will be the responsibility of the program supervisor and documentation maintained on a database and hard copy file. Compliance will be monitored quarterly by the responsible Program Chief and Deputy Director.

Finding Number 4:

The LEA inspects approximately 100 practitioners of tattooing, body piercing and permanent cosmetics annually. The focus of the inspection process is to establish and maintain sterile conditions and safe disposal of instruments. In 1999, Health and Safety Code §119305 authorized counties to adopt regulations to protect consumers and practitioners from transmission of contagious diseases through cross-contamination of instruments and supplies. The Riverside County Board of Supervisors has not adopted ordinances and regulations to implement legislation.

Response:

X Respondent agrees with the finding.

In 1999, counties expected quick adoption of State-wide regulations for the body art industry. Counties throughout the State have received repeated assurances that the new State regulations are imminent. State-wide regulations would replace any local regulations in effect at that time. After a number of drafts generated by the State Department of Public Health (in conjunction with counties, including Riverside) the regulations still have not passed the legislature. Some counties proceeded with their own ordinances and most others, including Riverside County, waited for the State to pass the regulations. In December 2009 it appeared that the regulations would pass but they did not. It was vetoed by the Governor as "unnecessary". The Department has decided after this most recent delay to proceed with a local ordinance. The proposed ordinance has been reviewed by medical professionals to ensure proper sanitation, related disease transmission education and preventive measures and is undergoing final legal review. A draft will then be provided to stakeholders for comment. However, Assembly Bill 223 which contains proposed regulations for the body art industry was amended on May 17, 2010 and re-referred to the State Committee on Health. If passed, these regulations would negate the need for a local ordinance.

Finding Number 5:

The DEH Application for registration of a person engaged in the business of tattooing, body piercing or permanent cosmetics (Attachment 1) does not require practitioners to:

a. **Provide proof of successful completion of an LEA approved health and safety class that has a curriculum, which contains all the sections of Hazard Control plan**

Response:

X Respondent disagrees wholly with the finding.

This already occurs; the applicant must sign the registration form that lists the completion of health and safety courses.

b. **Establish an Exposure Control Plan**

X Respondent disagrees wholly with the finding.

The exposure control plan is verified during the inspection by LEA staff.

c. **Obtain a facility permit**

X Respondent disagrees partially with the finding.

A facility permit is not required; however, practitioners must become registered.

d. **Document practitioners' protection against Hepatitis B**

X Respondent disagrees wholly with the finding.

The interim standards include universal precautions the practitioner is to follow while performing procedures and the exposure control plan is reviewed during the inspection. These universal precautions would limit exposure to any blood borne pathogens.

e. **Obtain a copy of LEA health standards.**

X Respondent disagrees wholly with the finding.

The practitioner must sign the registration form that acknowledges they have received a copy of the standards.

Finding Number 6:

CHA issued Interim Standards in 1999 to use by Environmental Health Specialists when inspecting tattooing, body piercing and permanent cosmetics operations (Attachment 2). Practitioners sign the form, which commits the signer to comply with these standards. An Advisory Inspection Report is provided to practitioners' at the completion of inspections (Attachment 3). Neither the Interim Standards nor Advisory Inspection forms actually contain standards. They merely consist of checklists of subjects that shall apply to a practitioner.

Response:

X Respondent disagrees partially with the finding.

The standards are listed in both the document provided to the practitioner, and then are further discussed with the practitioner during the inspection. These are the only standards that exist at this time. Additional standards will be more clearly defined and implemented if the proposed local ordinance is approved.

Finding Number 7:

Riverside County Health Services Agency Interim Standards for tattoo and body art practitioners advises: "Practitioners shall not: Apply any tattoo to any person under eighteen (18) years of age except when authorized or directed by a physician." This information is incomplete as stated.

Response:

X Respondent disagrees partially with the finding.

This wording is similar to the wording in the California Penal Code §653. Local law enforcement is responsible for the enforcement of this Penal Code section and the Department will continue to forward these complaints to the appropriate jurisdiction. These requirements are included in the proposed local body art ordinance.

Finding Number 8:

Another incomplete statement in the Interim Standards states that practitioners shall not "Perform body piercing on a person under age of eighteen unless a parent or guardian accompany them."

Response:

X Respondent disagrees partially with the finding.

This wording is similar to the wording in the California Penal Code §652. Local law enforcement is responsible for the enforcement of this Penal Code section

and the Department will continue to forward these complaints to the appropriate jurisdiction. These requirements are included in the proposed local body art ordinance.

Finding Number 9:

Written registration information provided to practitioners of tattooing, body piercing and permanent cosmetics establishments does not inform registrants that a person who violates sterilization, sanitation, and safety standards shall be subject to a civil penalty of $500 per violation. There are no provisions for the revocation (after due process) and reinstatement of registration.

Response:

X Respondent agrees with the finding.

This was not stated in the registration information the department was providing. The escalation of enforcement will be outlined in a new policy (similar to other programs within the DEH) and will be included in the revised registration packet.

Finding Number 10:

Health and Safety Code §119303 required practitioners to pay an annual inspection fee of $105 beginning in January 1999. DEH did not begin collecting the fee until January 2009, ten years later (Attachment 4). DEH's failure to collect these fees from practitioners from 1999 to the end of 2008 deprived the department and county of much needed revenue.

Response:

X Respondent agrees with the finding.

The inspection fee was not charged until the January 2009 billing cycle.

Finding Number 11:

The 2009-2010 Riverside County Grand Jury requested that DEH provide a list of body art practitioner inspections completed in Riverside County in 2007, 2008, and 2009. The lists received contained some incomplete and clearly erroneous data such as:

a. Numerous inspections were listed as completed in cities in San Bernardino, Orange, San Diego and Los Angeles counties.

Response:

X Respondent agrees with the finding.

Some of the data provided listed a practitioners mailing address instead of the facility location where the inspection was conducted.

b. **Contrary to testimony from several DEH inspectors and supervisors, inspections were completed in the unincorporated portions of Riverside County.**

Response:

X Respondent disagrees partially with the finding.

There are still some body art establishments located in County unincorporated areas. It is true that current land use rules did not allow the opening of new body art establishments in the unincorporated areas. However, existing establishments have been "grandfathered" and allowed to operate. The Department will not approve new body art establishments in the unincorporated areas without prior Planning Approval.

c. **It is not clear from the information provided what subsequent actions were taken after inspections disclosed discrepancies such as: "waste disposal" and "sanitation" during routine and follow-up inspections.**

Response:

X Respondent disagrees partially with the finding.

General responses were provided because the actual inspection reports were not requested. The practitioners were verbally instructed on the problem and the issue was resolved while the specialist was on-site. These actions should be found noted on the inspection reports.

d. **Inspection information was not specific enough to be useful. Entries such as "Riverside", "Riverside Countywide" and "Moreno Valley", etc., were provided instead of exact address and practitioner identification information.**

Response:

X Respondent disagrees partially with the finding.

The Department attempted to provide the information which was requested. Inspection tracking methodology will be reviewed to ensure the location address, mailing address, and practitioner identification is written in a clear and understandable format.

RECOMMENDATIONS

Recommendation Number 1:

DEH Supervisors should ensure that the content, sequence and procedures for training as specified in Policy No. 708 are followed.

Response:

X The recommendation has been implemented.

All staff assigned to this program will now be required to read and initial Policy 708 during their annual evaluations. Any new staff hired or transferred into this program will be trained in Policy 708 within 30 days of their start date. Further, this will also be required of all Program Supervisors and Program Chiefs.

Recommendation Number 2:

DEH supervisors/trainers should maintain training documentation on a database and hard copy file records as required by Policy No. 708, Paragraph XV. "Documentation of Training".

Response:

X The recommendation has been implemented.

Training was performed and documentation on file but not maintained or organized in a centralized location. All training documentation will now be organized and maintained in a central location. This will be the responsibility of the program supervisor; and compliance will be monitored quarterly by the responsible Program Chief and Deputy Director.

Recommendation Number 3:

DEH supervisors/trainers administer oral and written tests as prescribed in Policy No. 708.

Response:

X The recommendation has been implemented.

This will be the responsibility of the program supervisor and documentation maintained on a database and hard copy file. Compliance will be monitored quarterly by the responsible Program Chief and Deputy Director.

Recommendation Number 4:

The DEH should develop and the Riverside County Board of Supervisors should adopt the required ordinances/regulations immediately to protect practitioners and their customers. DEH should then proceed to have cooperating cities adopt the ordinance or enter into other agreements with DEH for inspection services.

Response:

X The recommendation has not yet been implemented, but is expected to be implemented in the Fall of 2010.

As the Grand Jury was previously advised by the Department, the ordinance has been drafted and will be brought before the Board of Supervisors for review and approval in the near future. The State has proposed regulations on this issue for years. The most recent attempt was vetoed by the Governor in December 2009. As with most counties in the State, the Department has been waiting for State regulations to be adopted in order to have consistent regulations. The California Conference of Directors of Environmental Health (CCDEH) had advised that the "adoption of local ordinances has the potential to create a regulatory quagmire." Since the State has failed to adopt regulations, the Department intends to proceed with a proposed local ordinance at this time. If the recently introduced Assembly Bill 223 is passed, it would negate the need for a local ordinance.

Recommendation Number 5:

DEH must ensure the potential practitioners complete all requirements of registration, as recommended by the California Conference of Local Health Officers (CCLHO), before LEA issues a Certification of Registration.

Response:

X The recommendation has been implemented.

This practice has been in place since the beginning of the program. The Program Chief that oversees this program is modifying the "Certificate of Registration" process to ensure the requirements are clear to the practitioners.

Recommendation Number 6:

The Health and Safety Code does not authorize unenforceable Interim Standards to be used in lieu of enforceable regulation with standards. LEA should develop an up-to-date set of standards for use by Environmental Health Specialists.

Response:

X The recommendation has not yet been implemented, but will be implemented in the future. (see response to Recommendation Number 4)

Should the Board adopt the proposed local ordinance, there will be an enforceable regulation with standards to use.

Recommendation Number 7:

This advisory, if to be continued in use, should be consistent with California Penal Code §653: Tattooing persons under the age of 18. "Every person who tattoos or offers to tattoo a person under the age of 18 years is guilty of a misdemeanor. This section is not intended to apply to any act of a licensed practitioner of the health arts performed in the course of its practice."

Response:

X The recommendation has not yet been implemented, but will be implemented in the future. The timeframe is by July 1, 2010.

This additional wording will be added to the "Certificate of Registration". However, local law enforcement is responsible for the enforcement of this Penal Code section.

Recommendation Number 8:

Change the body piercing standard to accurately reflect Penal Code §652, which states "it shall be an infraction if any person performs or offers to perform body piercing upon a person under the age of 18 years, unless the body piercing is performed in the presence of or as directed by a notarized writing by the person's parent or guardian."

Response:

X The recommendation has not been implemented, but will be implemented in the near future.

While local law enforcement is responsible for the enforcement of the Penal Code section, these requirements are included in the proposed body art ordinance.

Recommendation Number 9:

Update the registration forms to completely inform practitioners of all fees and consequences of violations. Institute an appropriate set of investigative standards and impose and collect civil penalties if and when allowed. Riverside County would retain all penalties collected.

Response:

X The recommendation has not yet been implemented, but will be implemented in the future. The timeframe is by July 1, 2010.

The registration form is currently being revised to include this information.

Recommendation Number 10: DEH should immediately:

a) Ensure that all practitioners are registered with DEH and pay the one-time registration fee.

Response:

X The recommendation has been implemented.

The one-time registration fee of $25.00 has been charged to all applicants beginning in 1999 and has continued from that time to the present.

b) Provide registrants with applicable Department standards.

Response:

X The recommendation has been implemented.

The Department has provided current standards to applicants in the past. An Informational Bulletin that includes this and additional information will be developed and provided to each applicant for clarification.

c) Ensure all registrants are inspected annually and pay the cost of the inspection to DEH. Riverside County is authorized to charge an additional amount if necessary to cover the actual cost of registration and inspection.

Response:

X The recommendation has been implemented.

Any new or modified fees for this will be added to Ordinance 640. As a point of clarification, all practitioners are inspected annually and have been charged the $105.00 annual inspection fee since January 2009.

d) **Ensure that practitioners who fail to register or violate the sterilization, sanitation and safety standards are subject to a civil penalty of five hundred dollars ($500) per violation, as required by the Health and Safety Code §119306.**

Response:

X The recommendation has not yet been implemented, but will be implemented in the future. The timeframe is July 1, 2010.

The Supervisor, Program Chief and Deputy Director that oversees this program will be responsible for implementing this.

Recommendation Number 11:

Information provided to agencies outside of DEH should be responsive to the information requested with as much accuracy and specificity as possible.

Response:

X The recommendation has been implemented.

The initial list of registrants was somewhat confusing without a more detailed explanation, which was provided at a later time.