



**ORANGE COUNTY
HEALTH DEPARTMENT**

Rosemary L. Summers,
MPH, DrPH
Health Director

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Central Administrative
Services

Dental Health Services

Environmental Health
Services

Health Promotion and
Education Services

Personal Health Services

300 West Tryon Street
Hillsborough, NC 27278

PH: (919) 245-2411
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May 3, 2010

Adam Bliss, President
Smokestackers, Inc. dba Hookah Bliss
418 West Franklin Street
Chapel Hill, NC 27516

Dear Mr. Bliss,

On March 22, 2010 you were issued a Third Notice of Violation of Article 23, Part 1C of the North Carolina General Statutes and more particularly §130A-496, Smoking Prohibited in Restaurants and Bars. The law provides that the local Health Director may impose administrative penalties on "a person who manages, operates, or controls a restaurant or bar" who fails to comply with the law.¹ The law provides that a local health director may impose on such a person for third and subsequent violations of the law an "administrative penalty of not more than two hundred dollars (\$200.00)."² With the third violation, an administrative penalty of \$200 was imposed upon you for each day you remained out of compliance with the law. The penalty was assessed upon you, Adam Bliss, as the person who manages, operates, or controls Hookah Bliss in accordance with NCGS 130A-22 (h1).

On April 20, 2010, you notified the Health Department that you had come into compliance with the law by canceling your ABC Permit to sell malt beverage. On April 21, 2010 Tom Konsler, Environmental Health Director, visited Hookah Bliss and verified you had cancelled your ABC Permit. With the cancellation of the permit, the law prohibiting indoor smoking no longer applies to Hookah Bliss. On April 22, 2010 you received an invoice for administrative penalties in the amount of \$6400, for the period March 22 through April 20, 2010, the time that you were not in compliance with the law after the third notice of violation.

This letter is to notify you that I am withdrawing the administrative penalty for the period March 22 through April 20, 2010. My decision to withdraw the administrative penalty is made on the following basis:

1. The law first went into effect on January 1, 2010 and requirements for compliance and subsequent penalties may have been misunderstood by you because of the unique nature of your business;
2. The primary goal of enforcement of this and other public health laws is to protect the health, safety and welfare of our population and compliance with the law is one way to protect the public; and
3. Canceling your ABC Permit made Hookah Bliss no longer subject to the law prohibiting indoor smoking.

This is a one time only waiver of administrative penalties. Should you change your practices in the future such that your establishment meets the definitions of a bar or restaurant, you will be subject to the requirements of this law. Should

¹ N.C. Gen. Stat. §§ 130A-497(e) and 130A-22(h1)

² Ibid

you fail to comply with the provisions of the law, you will be subject to the \$200 administrative penalty in accordance with N.C. Gen. Stat. § 130A-22(h1)(1) for each day you are not in compliance with the law.

In addition, please note that the jurisdiction of the Board of Health is limited to "appeals concerning the enforcement of rules adopted by the local board of health and the imposition of administrative penalties by the local health department." (emphasis added)³ The notice of appeal you sent April 8, 2010, indicates your grounds for appeal "are that hookahs do not fall under the definition of smoking laid out in Statute 130A-492 section 9, (sic) the tobacco in hookahs is not "lighted" therefore the violations are not valid. The Smoking Prohibition in Restaurant and Bars law is a state statute and not a local rule adopted by the Orange County Board of Health. The Board has only jurisdiction over the "imposition of administrative penalties" and whether those penalties were made in compliance with the provision of the law.

Unless you provide written notice that you are withdrawing the appeal, the appeal hearing will proceed as scheduled on May 4, 2010 at 6:30 pm at Southern Human Services Center, Room A/B.

Sincerely,



Rosemary L. Summers, MPH, DrPH
Health Director

Cc: Anissa Vines, Chair Board of Health
Annette Moore, Staff Attorney
Tom Konsler, Environmental Health Director

³ N.C. Gen. Stat. § 130A-24(b)