

**STATE OF NEW HAMPSHIRE  
OFFICE OF PROFESSIONAL  
LICENSURE AND CERTIFICATION**

---

**BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS**

**In Re: Bright Esthetics & Body Wellness  
Shop License #4274**

Docket No.: 2024-BAR-007

**Owner: Heather Allan  
License #21677**

**PREHEARING CONFERENCE ORDER  
AND FINAL ORDER AND DECISION –  
03/15/24**

---

**I. CASE SUMMARY/PROCEDURAL HISTORY:**

On or about 09/19/23 the New Hampshire Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”) conducted an inspection of Bright Esthetics & Body Wellness (owner Heather Allan) (“Licensee”) and assessed 50 violation points for failure to have a photo posted on a license for Destiny S. Bonenfant. Pursuant to Bar Rule 404, OPLC Enforcement sent the Licensee a proposed settlement agreement with the option of alternatively requesting a hearing/prehearing conference. On 12/27/23 the Licensee requested a hearing, and the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”) obliged. This Prehearing Conference Order of 03/15/24 follows.

**II. SUMMARY OF THE PREHEARING CONFERENCE:**

Hearing Counsel, the Presiding Officer, and Board Administrator appeared for a prehearing conference held pursuant to RSA 310:10, VI and Rule 206.17. The Licensee failed to appear. The first portion of the prehearing conference was in public, and the Presiding Officer discussed process. The second part of the prehearing conference was held in non-public. Hearing Counsel stated his intention to file a motion to dismiss the matter because he did not believe he could meet his burden of proof. The

Presiding Officer heard the motion orally instead and dismissed the proceeding for the following reasons stated below.

The issues presented in this matter are as follows:

1. Whether or not the Licensee violated RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (see Rules 302.05, 302.07, 501.01, 501.02) by allegedly operating a shop with one or more of the related sanitation, health, and/or safety violations, as set out in the inspection report and/or memorandum dated 11/30/2023.
2. Whether or not the Licensee violated RSA 313-A:22, II(c) and/or RSA 313-A:22, II(i)(see Rules 302.07, 404.01, 501.01, 501.02, RSA 313-A:17, and/or RSA 313-A:9) by allegedly operating a shop with one or more of the related licensing violations, as set out in the inspection report and/or memorandum, dated 11/30/2023.
3. If the Board makes a finding of misconduct pursuant to issues 1 and/or 2 above, whether and to what extent the Respondent should be subject to discipline pursuant to RSA 313-A:22, III, Bar 402, Bar 404, and/or RSA 310:12.
4. If the Board makes a finding of misconduct pursuant to issue 1 and/or 2 above, whether and to what extent the Board should adjust the administrative fine amount on account of any aggravating or mitigating factors pursuant to Bar 404.11 (see RSA 313-A:22, II(g)).

Hearing Counsel's 03/11/24 Notice of Issues Presented.

The 11/30/23 Inspection Report (which the Presiding Officer concludes is a complaint within the meaning of Plc 202.07) does not allege any sanitation, health, and/or safety violations. The Presiding Officer concludes as a matter of law then that issue presented 1 does not state a viable claim with respect to the 11/30/24 Inspection Report because it incorrectly states the Inspection Report alleges sanitation, health, and/or safety violations. *See* RSA 310:10, IV and VI. Therefore, issue presented 1 should be dismissed pursuant to RSA 310:10, VIII(b).

The Presiding Officer next addresses issue presented 2. The 11/30/23 Inspection Report alleges 50 violation points for the Licensee having “[n]o photo on License as Required...” for “Destiny S. Bonenfant, #34854...” In support of the request for a finding of professional misconduct based upon that allegation,

issue presented 2 cites Bar Rules 302.07, 404.01, 501.01, 501.02, RSA 313-A:17, and/or RSA 313-A:9.

The Presiding Officer considers each of those statutes and rules below:

1. Bar Rule 302.07(y) instructs that "...[a] licensee, instructor, or shop apprentice shall attach a current passport photograph to the professional or shop apprentice license upon receipt of the license." The rule places the onus of the requirement on the licensee who holds the license. Here the allegations state that Destiny S. Bonenfant holds the license in question— not the Licensee. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes this allegation should be dismissed as a matter of law under RSA 310:10, VIII(b).
2. Bar Rule 404.01 places specific responsibilities on OPLC Board Inspectors during an inspection. As a matter of law, a licensee cannot have liability for potential professional misconduct under a rule that assigns responsibilities to the OPLC Board Inspectors. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes this allegation should be dismissed as a matter of law under RSA 310:10, VIII(b).
3. RSA 313-A:9 creates criminal liability for individuals engaged in the unlicensed practice of barbering, esthetics, or cosmetology. The 11/30/23 Inspection Report does not allege the Licensee engaged in unlicensed practice in any of those professions. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes this allegation should be dismissed as a matter of law under RSA 310:10, VIII(b).
4. RSA 313-A:17 states: "[e]very person licensed under this chapter shall display the license in a conspicuous place adjacent to or near the person's work station." The 11/30/23 Inspection Report does not allege that any of the Licensee's licenses were displayed improperly. Even if not having a photograph on the license could be interpreted as displaying the license improperly, the statute places the onus of ensuring a license is properly displayed on the holder of the license. Here the

allegations state that the license at issue belongs to Destiny S. Bonenfant—not the Licensee. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes this allegation should be dismissed as a matter of law under RSA 310:10, VIII(b).

5. Bar Rules 501.01 and 501.02 require licensees to obey certain listed ethical conduct standards. The 11/30/23 Inspection Report does not allege a violation of the ethical conduct standards set forth in Bar 501.01 or 501.02(b) – (k). The only remaining Bar rule is 501.02(a), which requires licensees to comply with RSA 313-A and the board’s administrative rules. For the reasons stated herein, the Licensee has not, as a matter of law, violated any of the provisions of RSA 313-A or the Board’s rules cited in the Notice of Issues Presented. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes this allegation should be dismissed as a matter of law under RSA 310:10, VIII(b).

Given the Presiding Officer has determined that issues presented 1 and 2 should be dismissed as a matter of law, issues presented 3 and 4 are moot. Pursuant to RSA 310:10, IV and VI, the Presiding Officer therefore concludes that issues presented 3 and 4 should be dismissed as a matter of law under RSA 310:10, VIII(b). There being no further issues presented remaining in relation to the 11/30/23 Inspection Report, the Presiding Officer concludes as a matter of law that this disciplinary proceeding should be dismissed with prejudice in its entirety under RSA 310:10, VIII(b).

### **III. ORDERS:**

1. Pursuant to RSA 310:10, IV, RSA 310:10, VI, and RSA 310:10, VIII(b), this disciplinary adjudicatory proceeding is dismissed with prejudice in its entirety as a matter of law. Case closed, no further action to be taken.
2. Pursuant to RSA 310:10, IX this prehearing conference order shall be made available to the public after being served upon the parties because it is dispositive action taken after the issuance of a notice of public hearing.

So Ordered.

DATED: 4/1/2024

\_\_\_\_\_/s/ Nikolas K. Frye, Esq.\_\_\_\_\_  
Nikolas K. Frye, Esq., Administrative Law Judge  
Presiding Officer  
New Hampshire Office of  
Professional Licensure & Certification  
7 Eagle Square  
Concord, NH 03301