

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

BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

In Re: Diamond Barber Shop & Lounge
License No.: Shop License #4890
Shop Owner: Hairon M. Rodriguez
Fernandez
Barber License #25531

Docket No.: 23-BAR-013

NOTICE OF DECISION DATED 12/7/2023

Enclosed please find a copy of the Board's Order dated 12/7/2023 relative to:

HEARING FINAL DECISION AND ORDER

MOTIONS/PETITIONS FOR RECONSIDERATION OR REHEARING:

Pursuant to N.H. Code Admin. R. Plc 206.29(a) ("Rules") and RSA 310:14, II, motions/petitions for reconsideration or rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.29(b), the Motion/Petition shall: 1) clearly identify points of law or fact that the movant asserts the Board and/or Presiding Officer has overlooked or misapprehended; 2) contain such argument in support of the motion as the movant desires to present; and 3) be served by the movant on all other participants in accordance with Rule 206.11. Pursuant to Rule 206.29, no answer to a motion/petition for reconsideration or rehearing shall be required, but any answer or objection filed shall be delivered to the Presiding Officer's Office within 5 working days following receipt of service of the motion/petition for reconsideration. Pursuant to RSA 541:5, upon the filing of such motion/petition for rehearing or reconsideration, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a rehearing and/or motion for reconsideration shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal.

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BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

**Diamond Barber Shop & Lounge
Shop License #4890**

**Shop Owner: Hairo M. Rodriguez
Fernandez
Barber License #25531**

Docket No.: 23-BAR-013

FINAL DECISION AND ORDER – 11/20/23

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

Jeanne Chappell, Board Chair and Member
Sarah J. Partridge, Board Member
Donna Woodsom, Board Member
Sara Joe, Board Member

Talia Wilson, OPLC Board Administrator
Teresa Boyer, OPLC Board Administrator
Elizabeth Eaton, OPLC Board Counsel

Presiding Officer:

Attorney Nikolas Frye, OPLC Hearings Examiner
Thomas Pappas, Jr., Hearings Clerk

Parties:

Marissa Schuetz, Esq., OPLC Hearing Counsel
Diamond Barbershop/Hairo M. Rodriguez, Licensee (failed to appear)
Luisa Perez, Third Party Translator

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 2/10/23, the New Hampshire Office of Professional Licensure and Certification (“OPLC”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”),

conducted a routine inspection of Diamond Barber Shop & Lounge (“Licensee”) and assessed 2,927 violation points for multiple hygiene, safety, and license related violations found on the premises. After investigation and review, the Board voted to commence this adjudicative proceeding on 2/10/23. A final hearing in this matter was held on 11/20/23. This final decision and order follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

The Board received the following evidence pursuant to RSA 541-A:33 and Plc Rules 206.22 and 206.18(d):

A. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. 06/14/22 Opening Inspection Report and Application for Diamond Barbershop
2. 02/10/23 Memorandum of Inspection
3. 02/10/23 Inspection Report
4. Inspection Photographs

B. Exhibits were submitted by the Licensee and labeled as follows:

None.

C. Sworn testimony was received from:

1. Sandra Hodgdon, Chief Inspector, OPLC, Division of Enforcement (via offer of proof)
2. Luisa Perez, Third Party English to Spanish Interpreter

The Presiding Officer fully admitted Exhibits 1-4 after reviewing them, hearing an offer of proof with respect to each, and determining they were material and relevant to the proceeding.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

Before the hearing began, the Presiding Officer swore in the third party English to Spanish translator using the New Hampshire Judicial Branch Code of Professional Responsibility for Interpreters, Appendix B, Canon 4. She provided English to Spanish interpretation throughout the hearing. The Licensee failed to appear for the final hearing in this matter. The record showed that the Licensee had previously stated during prehearing conferences held in this matter that he would accept correspondence through email. The record showed that on 09/27/23 OPLC emailed the Notice of Adjudicative Hearing

to the email address provided by the Licensee and it was not returned as undeliverable. The record also showed that on 11/04/23 OPLC mailed the Notice of Hearing to the address provided by the Licensee via both First Class Mail and Certified Mail, Return Receipt Requested. As of the date of the hearing, OPLC had not received the return receipt, but the first class mail had not been returned. The record shows that the “Notice of Adjudicative Hearing- 11/20/23 @ 9:30 AM” stated the hearing was on 11/20/23 at 9:30 AM, was located at OPLC, 7 Eagle Square, Concord, NH 03301, and contained the information required by RSA 541-A:31 and Plc Rule 206.06(b). The record contains no correspondence from the Licensee in which she or any of her representatives claim an inability to make the hearing or request a continuance.

After considering the aforementioned record, the Presiding Officer determined that the Licensee had received sufficient notice under RSA 310:10, II and Plc 206.11(b). The Presiding Officer additionally found and concluded that OPLC had provided “notice reasonably calculated, under all the circumstances, to apprise ... [the Licensee] ... of the pendency of the action and afford ... [her] ... an opportunity to present ... [her] ... objections.” *See, i.e., Jones v. Flowers*, 547 U.S. 220, 225-26 (2006); *See also City of Claremont v. Truell*, 126 N.H. 30, 35 (1985). Hence, the Presiding Officer found and concluded that notice was sufficient under both the Federal and State Constitutions.

The hearing was then held pursuant to RSA 310:10 with the burden of proof, by a preponderance of the evidence, placed upon Hearing Counsel. *See* Rule 206.07(e). The issues before the Board were:

- (1) Whether the Licensee committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (*see* N.H. Code Admin. Rs. Bar 404.09 et seq., 302.05 et seq., and/or 302.07 et seq.) by allegedly operating a shop with one or more of the related health and safety violations, as set out in the inspection report, dated 2/10/23.
- (2) Whether the Licensee committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (*see* N.H. Code Admin. Rs. Bar 404.09 et seq., 302.07(g)(6), 302.07(y), RSA 313-A:9, II(b), and/or RSA 313-A:10) by allegedly operating a shop with one or more of the license-related violations as set out in the inspection report, dated 2/10/23.

- (3) If a finding of misconduct is made with respect to issues 1 and/or 2, whether the Licensee committed professional misconduct as defined at RSA 313-A:22, II(g).
- (4) If the Board makes a finding of misconduct, what if any discipline the Board should impose upon the Licensee's license pursuant to RSA 313-A:22, III, RSA 310:12, and N.H. Code Admin. R. Bar 402.

NOH at II.(c).

The Board then heard evidence related to these inquiries as summarized below.

HEARING COUNSEL'S CASE-IN-CHIEF:

Sandra Hodgdon, OPLC Chief Inspector (via offer of proof):

Ms. Hodgdon, through an offer of proof given by Hearing Counsel and questioning by the Presiding Officer, testified to the authenticity and meaning of Exhibits 1-4 and that Hearing Counsel's proposed findings of fact were true and accurate to the best of her knowledge and belief.

LICENSEE'S CASE-IN-CHIEF:

None.

V. DISCUSSION, FINDINGS OF FACTS, AND CONCLUSIONS OF LAW:

Based upon the evidence that was presented to the Board at the hearing, and considering the presentation and demeanor of the witness, the Board makes the following findings of facts, which are Hearing Counsel's Proposed Findings of Fact 1-3:

1. At all times relevant, Hairon Rodriguez was the owner of shop license #4890, named Diamond Barber Shop & Lounge ("Shop") located at 14A Broad Street, Nashua, NH 03063. This shop license #4890 was first granted on or about June 17, 2021. *See* Exhibits 1 and 3.
2. At all times relevant, Hairon Rodriguez was in possession of barber license #25531. *See* Exhibits 1 and 3.
3. On February 10, 2023, Inspectors Hodgdon and Avery conducted a routine inspection of Diamond Barber Shop & Lounge and found the following violations totaling two thousand and nine-hundred-and-twenty-seven (2,927) points:
 - a. Nine hundred and twenty-seven (927) points for disinfection and sanitation issues including: floors, walls, woodwork, and furniture not cleaned as required; five (5) disinfection containers

not maintained as required; one hundred and forty-five (145) implements & appliances not cleaned and disinfected properly; and thirty (30) towels improperly deposited and cleaned in a container between uses. *See* Exhibit 3.

- b. Fifteen hundred (1,500) points for the personal witnessing and disclosure by the owner of persons working without a NH license. Fifty (50) points for operating a business without appropriate licensure on first offense. Fifty (50) points for failure to include a photo on license as required. *See* Exhibit 3.
- c. Four hundred (400) points for providing a service not within the scope of practice, first offense.

Based upon the findings of fact made by the Board, the Presiding Officer makes and adopts the following conclusions of law and renders the following legal opinions:

- 1. The Licensee committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), RSA 313-A:22, II(i), and RSA 313-A:22, II(g) (*see* N.H. Code Admin. Rs. Bar 404.09 et seq., 302.05 et seq., and 302.07 et seq.) by operating a shop with the related health and safety violations, as set out in the inspection report, dated 2/10/23.
- 2. The Licensee committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), RSA 313-A:22, II(i), and RSA 313-A:22, II(g) (*see* N.H. Code Admin. Rs. Bar 404.09 et seq., 302.07(g)(6), 302.07(y), RSA 313-A:9, II(b), and RSA 313-A:10) by operating a shop with the license-related violations as set out in the inspection report, dated 2/10/23.

Upon a finding of misconduct made pursuant to RSA 326-B:37, II, by a preponderance of the evidence, the Board imposes the following disciplinary action against the Licensee pursuant to RSA 310:12(c):

- 1. Pursuant to RSA 310:12, I(a) the Board hereby **REPRIMANDS** Licensee's barbering license #25531 and shop license #4890.
- 2. Pursuant to RA 310:12, I(d), the Board hereby orders:
 - a. A **PROBATIONARY PERIOD** of two (2) years upon the Licensee's barbering license #25531 and Licensee's shop license #4890.
 - b. The Licensee shop owner to participate in (10) hours of program(s) of **CONTINUING EDUCATION** in the areas of sanitation, sterilization, disinfection, and infection control within thirty (30) days of the signed date of this order. The continuing education may be completed through electronic means or "in person". To document successful completion of the program(s), the Licensee shall provide the Board with written documentary proof issued/authored by the program offering the course(s).

- c. The Licensee shall come into compliance with all matters noted in the inspection report dated 2/10/2023; including but not limited to licensing, sanitation, and sterilization issues.
- 3. Pursuant to RSA 310:12, I(e), the Board affirmatively assesses Hairon Rodriguez, as owner of shop license #4890, an **ADMINISTRATIVE FINE** in the amount of \$2,927.00.
- 4. Pursuant to RSA 332-G:11, the Board affirmatively assesses Hairon Rodriguez, as owner of shop License #4890, the reasonable **COST OF INVESTIGATION AND PROSECUTION** of this disciplinary proceeding in the amount of \$250.00.
- 5. The administrative fines and/or cost of investigation and prosecution shall be paid within 90 days of the below signed date of this final order. *No* separate invoice will follow.
- 6. Pursuant to RSA 313-A:22(g), if the Licensee fails to comply with any terms or conditions imposed by this Final Decision, said failure shall constitute misconduct.
- 7. Pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee.
- 8. In determining what sanctions to impose, the Board considered 313-A:22 and the factors enumerated in Bar Rule 402.01(d).
- 9. Pursuant to RSA 313-A:22 and Bar Rule 402.01(d), the Licensee is subjected to the above-referenced discipline as the minimum sanction that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee and any other licensees from engaging in such misconduct in the future.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 310:10, RSA 310:12, and RSA 313-A:22, II, the Presiding Officer and Board hereby makes the herein findings of professional misconduct and imposes the disciplinary action against the Licensee’s licenses state herein.

DATED: 12/7/2023

_____/s/ Nikolas K. Frye, Presiding Officer_____
 Presiding Officer
 New Hampshire Office of
 Professional Licensure & Certification
 7 Eagle Square
 Concord, NH 03301