

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

**In Re:
Zapata's Barbershop,
Shop License #2825**

**Francis Zapata, Owner
Personal License #11629**

Docket No.: 22-BAR-013

**FINAL DECISION AND
ORDER- 01/17/23**

I. ATTENDEES:

Jeanne Chappell, Board Member and Chair
Sarah Partridge, Board Member
Donna Woodsom, Board Member
Ann Dalton, Board Member
Joshua Craggy, Board Member
Talia Wilson, Board Administrator
Tracey Pappas, Board Administrator
Lauren Warner, Esq., Board Counsel
Nikolas K. Frye, Esq. Presiding Officer
Marissa Schuetz, Esq., Hearing Counsel
Francis Zapata, Licensee Shop Owner and Personal License
Sandra Hodgdon, Investigator for OPLC and Witness

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 04/07/22, 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 an inspection of Zapata's Barbershop ("Licensee") and assessed 1,244 violation points for multiple hygiene, safety, and license related violations found on the premises. After further investigation by OPLC, the Board voted to commence this adjudicative proceeding on 07/18/22. The matter was

continued in October of 2022. After providing the Licensee with new notice, the adjudicatory hearing was held 01/17/23. This Final Order follows.

III. SUMMARY OF THE EVIDENCE:

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 213.03:

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

1. Memorandum to Board 05/12/22
2. Shop Inspection Form 04/07/22
3. Shop Application Form 12/29/14
4. Shop Inspection Form 01/05/15
5. Shop Inspection Form 02/02/16
6. Shop Inspection Form 02/08/17
7. Shop Inspection Form 03/03/18
8. Shop Inspection Form 04/19/19
9. Shop Inspection Form 09/03/20

b. No Exhibits were submitted by Licensee.

c. Sworn testimony was received from:

1. Sandra Hodgdon, Investigator (called by Hearing Counsel)
2. Francis Zapata, Licensee Shop Owner and Personal License Holder (called by Licensee)

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared for the hearing through Francis Zapata, who is the authorized representative/shop owner and also holds master barber license #11629. The Licensee indicated he was confused as to the purpose of the hearing and had not received Hearing Counsel's Exhibits. Consequently, the Presiding Officer reviewed the hearing process and each section of the Notice of Hearing with the Licensee in detail and provided him with hard copies of Hearing Counsel's proposed exhibits. After a brief non-meeting, the Presiding Officer informed the Licensee that the Board could reschedule the hearing, if he desired further preparation. The Licensee instead opted to review Hearing Counsel's Exhibits and proceed with the hearing as scheduled after indicating an understanding of the purpose of the hearing and how it would operate.

Hearing Counsel has the burden of proving its case by a preponderance of the evidence. The Presiding Officer admitted all of Hearing Counsel's evidentiary exhibits after providing the Licensee with the opportunity to object to each of them. No objections were made. Hearing Counsel called one witness, Sandra Hodgdon. Licensee stated that he had no documentary exhibits and called himself as a witness. The credible evidence presented at the hearing allows the Board to find the following facts.

Sandra Hodgdon, OPLC Investigator

Sandra Hodgdon was sworn and testified that she is an investigator for OPLC Enforcement. She explained that in her role as an investigator, she became acquainted with the Licensee through conducting inspections of the Licensee's shop premises. She stated she inspected the Licensee's shop premises on 04/07/22, which she described as being "very dirty" at the time. Ms. Hodgdon elaborated that the shop's disinfection containers had chunky debris in the bottom of them; implements were not cleaned, disinfected, and stored properly; and the shop walls, floors and woodwork were not clean. Ms. Hodgdon later explained during her testimony that she had taken pictures of the condition of the shop premises at the time of the inspection, which are contained in Exhibit 2. She reviewed these images and explained that they show the shop's walls, woodwork, and drawers, as well as some of the implements being used on customers. *See* Exh. 2, HC 5-13. According to Ms. Hodgdon's testimony, she also observed the shop premises to have licenses not posted and a personal license without a photograph on it. In addition to those observed licensing violations, Ms. Hodgdon testified that she also identified an apprentice present who, according to Board records, had not recorded any hours or tests for 12 months and a booth that was registered to be present and operating at a different barbershop than the Licensee's. She explained these were also violations of Board rules.

Ms. Hodgdon testified that the Licensee was not present during the inspection but later appeared. She stated that once the Licensee was present, she reviewed with him what the issues were and what he

needed to do to correct them. Ms. Hodgdon then turned to explaining some historical background pertaining to the Licensee. Her testimony revealed that he filled out his original shop application in late December 2014. *See* Exh. 3. She noted that as part of that process, the Licensee attested to having acknowledged and understood Board rules and participated in an opening inspection to ensure his shop was in compliance. *See* Exhs. 3 and 4. She stated she conducted the opening inspection and found that the Licensee was in compliance. *See* Exh. 4. According to Ms. Hodgdon's testimony, the Licensee's shop premises have been inspected multiple times since that initial inspection, and each time has had similar violations to those she found on 04/07/22. Exhibits 5, 6, 7, 8, 9, which Ms. Hodgdon referenced, are inspection reports from 02/02/16, 02/08/17, 03/03/18, 04/19/19, and 09/03/20, respectively. Exhibits 5, 6, and 9 contain violations for hygiene and sanitation related concerns. Likewise, Exhibits 5, 6, 7, and 8 contain violations for licensing, apprentice, and/or booth related concerns. Ms. Hodgdon testified that the Licensee was present for most of those inspections, and in instances when he was present she reviewed the violations with him and explained how to correct the problems.

Francis Zapata, Licensee Shop Owner

Francis Zapata, Licensee Shop Owner, was sworn in under oath and testified on his own behalf. He stated he had fired a couple of the barbers at his shop after this inspection because they were the cause of some of the alleged violations. Regarding the apprentice reporting issue, he indicated the apprentice was the brother of one of the barbers at his shop. The Licensee explained that it was his understanding that the individual was sending in the required paperwork to the Board. With respect to the unposted licenses, he indicated they were now posted. According to the Licensee's testimony, the barbershop is also repainted, his employee crew now does deep-cleans on a regular basis, and he monitors the cleanliness of each barber's station when he is not present at the shop by making them send him a photo of their

station after each customer. With respect to the booth violation, he testified that the booth owner was the daughter of a friend. The daughter was supposed to apply for the license, but apparently had not.

Upon cross examination, the Licensee acknowledged that he has been a master barber since 1998 and knows the Board rules and laws relating to licensing and sanitation. Board questioning revealed that the Licensee has invested in a UV sanitation device, the sanitation infractions were from barber's working for the Licensee, and everyone at the shop is currently licensed appropriately.

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

After reviewing all the evidence, accounting for the the presentation and demeanor of all the witnesses, and drawing all reasonable inferences therefrom the Board finds, by a preponderance of the evidence, that the Licensee (both as an individual licensee and shop licensee of this Board) committed professional misconduct. The Exhibits and witness testimony more than adequately support the conclusions that 1) the 04/07/22 shop violations noted by Ms. Hodgdon at Zapata's Barbershop occurred; 2) the shop owner Licensee was responsible for the condition of the shop and works there; and 3) the Licensee shop and Licensee shop owner have a significant history of making the same and/or similar violations since 2016. As part of this decision, and based upon the evidence presented and the findings of facts made herein the Board draws the following conclusions of law:

A. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(c)(See Rule 404.09) by operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/07/22: 1) shop floors, woodwork, and walls not cleaned as required; 2) Disinfectant containers were not maintained as required; and 3) 87 implements were not cleaned, disinfected and stored properly.

B. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(d)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of similar hygiene-related violations, operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/07/22: 1) shop floors, woodwork, and walls not cleaned as required; 2) Disinfectant containers were not maintained as required; and 3) 87 implements were not cleaned, disinfected and stored properly.

C. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(i)(See Rule 404.09) by operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/05/22: 1) shop floors, woodwork, and walls not cleaned as required; 2) Disinfectant containers were not maintained as required; and 3) 87 implements were not cleaned, disinfected and stored properly.

D. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(g)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of similar hygiene-related violations, operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/07/22: 1) shop floors, woodwork, and walls not cleaned as required; 2) Disinfectant containers were not maintained as required; and 3) 87 implements were not cleaned, disinfected and stored properly.

E. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(c)(See Rule 404.09) by operating a shop with the following license-related violations, as set forth in the inspection report, dated 04/07/22: 1) licenses not displayed as required; 2) a license displayed without a photograph of the licensee; and 3) having a booth renter on premises without a valid license for the Licensee's shop.

F. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(d)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of similar license-related violations, operating a shop with the following license-related violations, as set forth in the inspection report, dated 04/07/22: 1) licenses not displayed as required; 2) a license displayed without a photograph of the licensee; and 3) having a booth renter without a valid license for the Licensee's shop.

G. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(i)(See Rule 404.09) by operating a shop with the following license-related violations, as set forth in the inspection report, dated 04/07/22: 1) licenses not displayed as required; 2) a license displayed without a photograph of the licensee; and 3) having a booth renter without a valid license for the Licensee's shop.

H. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(g)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of similar license-related violations, operating a shop with the following license-related violations, as set forth in the inspection report, dated 04/07/22: 1) licenses not displayed as required; 2) a license displayed without a photograph of the licensee; and 3) having a booth renter without a valid license for the Licensee's shop.

I. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(c)(See Rule 404.09) by operating a shop with the following apprentice-related violation, as set forth in the inspection report, dated 04/07/22: having an apprentice working who was not current on his hours or testing with the Board.

J. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(d)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law

and having a similar, past license-related violation, operating a shop with the following apprentice-related violation, as set forth in the inspection report, dated 04/07/22: having an apprentice working who was not current on his hours or testing with the Board.

K. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(i)(See Rule 404.09) by operating a shop with the following apprentice-related violation, as set forth in the inspection report, dated 04/07/22: having an apprentice working who was not current on his hours or testing with the Board.

L. The Licensee Zapata and Licensee shop committed misconduct as defined at RSA 313-A:22, II(g)(See Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a similar, past license-related violation, operating a shop with the following apprentice-related violation, as set forth in the inspection report, dated 04/07/22: having an apprentice working who was not current on his hours or testing with the Board.

M. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee's shop license #2825 until the following occurs:

- a. The Licensee's shop passes an inspection conducted by a Board investigator with no violation points. The Licensee shall schedule this inspection with the Board investigator to occur at a time that is convenient for the Board investigator.

N. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee Zapata's personal licenses (#11629) until the following occurs:

- a. Pursuant to RSA 313-A:22(III)(d) and upon a finding of professional misconduct under section (II), the Board directs the Licensee shop owner to participate in 12 hours of program(s) of continuing education in the areas of sanitation and disinfection. To document successful completion of the course(s), the Licensee shall provide the Board with written documentary proof issued/authored by the program offering the course(s). **Whether any program(s) meets the requirements of this section shall be determined by the Board. Therefore, the Licensee is strongly encouraged to seek the Board's pre-approval of program(s) before taking them.** The Board has authorized the Board's Chair to pre-approve courses on its behalf, so that the Licensee does not have to wait until a meeting to learn whether coursework she wishes to take is acceptable. The Licensee can submit information about proposed programs to the Board's Administrator, who shall present same to the Board Chair for determination.

O. Pursuant to RSA 313-A:22(III)(e) and Rule 404, and upon a finding of professional misconduct under section (II), the Board affirmatively imposes an administrative fine of \$1,244.00 against the Licensee's shop license #2825, representing the cumulative point values for the violations noted in the 04/07/22 inspection report. Said administrative fine is assessed after hearing pursuant to Rule 404.11. In doing so the Board considered the Licensee shop's 1) long history of noncompliance with RSA 313-A, rules, or directives; and 3) awareness of RSA 313-A

and the board's rules through that prior history. The administrative fine shall be paid within 180 days of the below signed date of this final order.

P. Pursuant to RSA 313-A:22(g), if Licensee shop or Licensee Zapata fails to comply with any terms or conditions imposed upon it or him by this Final Decision, said failure shall constitute misconduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee shop and shop owner.

Q. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d). The Board notes that the factors contained in Rules 402.01(d)(1), (2), (3), (6), and (7) weighed heavily in favor of the Board's decision to suspend the Licensee's shop and personal licenses.

R. Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensee shop and Licensee Zapata are subjected to the above-referenced discipline as the minimum sanctions that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee shop, Licensee Zapata, and any other licensees from engaging in such misconduct in the future.

S. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee Shop and Licensee Zapata, in-hand, by OPLC staff. A copy of this order shall also be sent to the Licensee by certified mail, return receipt requested, first class mail, and by also by email (if reasonably practical).

VI. CONCLUSION AND DECISION:

Pursuant to RSA 313-A:22 and Rule 402, the Board hereby **SUSPENDS** Licensee's shop (#2825) and personal (#11629) licenses, and imposes the further discipline as outlined above.

DATED: 1/20/2023

_____/s/ Nikolas K. Frye, Esq._____
Nikolas K. Frye, Esq., Hearings Examiner
Authorized Representative of the
Board of Barbering, Cosmetology, and Esthetics-
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301