

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

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**BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS**

**In Re: Mr. Garcia Beauty Supply &  
Barbershop  
License No.: Shop License #4530 (expired)  
Henry Mendez, Manager  
License# 19804 (expired)  
Owner: Baretta Garcia (unlicensed)**

Docket No.: 23-BAR-032

**NOTICE OF DECISION DATED 11/29/2023**

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Enclosed please find a copy of the Board's Order dated 11/29/2023 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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**FINAL DECISION AND ORDER – 11/20/23**

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**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/Hairon M. Rodriguez, Respondent (failed to appear)  
Luisa Perez, Third Party Translator

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

On 05/17/23 the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”), conducted a routine inspection of Mr. Garcia Beauty Supply & Barbershop (“Respondent”) which resulted in 4,370 points for alleged sanitation and licensing violations. On 08/21/23 the Board voted to initiate a disciplinary adjudicative proceeding in this matter. 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. Sandra Hodgdon Confidential Memorandum, dated May 18, 2023 (Bates #HC001-002, 039);
2. Shop Inspection Report, dated May 17, 2023 (Bates #HC003-005);
3. 3. Photographs from May 17, 2023 inspection (Bates #HC006-026);
4. 4. Shop application and opening inspection paperwork (Bates #HC027-036); *Note: Social Security Numbers redacted as private information pursuant to RSA 91-A:5, IV.*
5. 5. Shop Inspection Report, dated October 29, 2019 (Bates #HC037);
6. 6. Shop Inspection Report, dated December 3, 2021 (Bates #HC038);
7. 7. MLO information for Respondent Shop (Bates #HC040)

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

None.

C. Sworn testimony was received from:

1. Sandra Hodgdon, Chief Inspector, OPLC, Division of Enforcement (via offer of proof)

The Presiding Officer fully admitted Exhibits 1-7 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:**

The Respondent failed to appear for the final hearing in this matter. The record showed that the Respondent had also failed to appear for the prehearing conference held in this matter. The record showed

that on 10/31/23 OPLC mailed the Notice of Adjudicative Hearing and prehearing conference order to the mailing address provided by the Respondent via First Class Mail and Certified Mail, Return Receipt Requested. The USPS website showed that the certified mailing was delivered on 11/04/23. The Hearings Clerk had also attempted to call the Respondent at the telephone number on file with the Board, but the telephone was disconnected. 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 Respondent 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 Respondent 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 Respondent] ... 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 also 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 or not the Respondent violated RSA 313-A:22, II(c), RSA 313-A:22, II(d), and/or RSA 313-A:22, II(i) (*see* Rules 404.09, 302.05, and/or 302.07) by allegedly operating a shop with one or more of the related health and safety violations, as set out in the inspection report, dated 5/17/2023.
- (2) Whether or not the Respondent violated RSA 313-A:22, II(c) and/or RSA 313-A:22, II(i) (*see* Rule 404.09, Rule 404.01(c) and (n), Rule 302.07(y), RSA 313-A:17, and/or RSA 313-A:19) by allegedly operating a shop with 1) unlicensed barbers, expired shop license, expired barber license as set out in the inspection report, dated 5/17/2023.

(3) If a violation is found in relation to issues 1 and/or 2 above, whether or not the Board should adjust the administrative fine amount on account of any aggravating or mitigating factors pursuant to Bar 404.11.

(4) Whether and to what extent the Respondent should be subject to discipline pursuant to RSA 313-A:22, III, N.H. Code Admin. R. Bar. 402 and/or RSA 310-A:1-m/RSA 310:12.

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 1-7 and that Hearing Counsel’s proposed findings of fact were true and accurate to the best of her knowledge and belief.

**RESPONDENT’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. Mr. Garcia Beauty Supply and Barbershop’s license to operate expired on March 31, 2023.
2. On May 17, 2023, inspectors Sandra Hodgdon and Shannon Avery performed a routine inspection at the Respondent shop and found the following violations totaling 4,370 points:
  - a. Floors, walls, woodwork, and furniture not cleaned (See Attachment 4). *Bar 302.05*
  - b. 55 Implements & Appliances not cleaned, disinfected, and stored in enclosed container (*Bar 302.07*),
  - c. No eyewash station. (*Bar 302.05*),
  - d. No Safety Data Sheets (*Bar 302.05*),

- e. Providing services with an expired license. (*RSA 313-A:19 and Bar 404.08(c)(5)*)
- f. Operating a business without appropriate license. (*RSA 313-A:19 and Bar 404.08(c)(7)*)
- g. 3 individuals performing services without NH licenses. (*RSA 313-A:19 and Bar 404.08(c)(5)*)
- h. Inspection report not displayed. (*Bar 404.01*)
- i. Apprentice attendance records and tests not current with the Board. (*Bar 301.04*)

3. The shop's disciplinary history is as follows:

- a. 11/4/2019 Investigation inspection resulted in a fine of \$50.00. Marvin Tineo Estevez was the only person in the shop and did not have a New Hampshire barber license. The shop was not registered with the board.
- b. 12/3/2021 a routine inspection was performed resulting in 931 points. Henry Mendez's barber license was expired, and Genci Enrique Baez Arias was working with no license.

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

- 1. The Respondent committed unlawful practice as defined at RSA 310-A:1-m, VIII<sup>1</sup> and RSA 310:13, when on 05/17/23, while not being licensed or otherwise authorized to practice barbering or operate as a barber shop according to the laws of New Hampshire: 1) advertised itself as engaging in barbering; 2) engaged in barbering and operating a barbershop; 3) and held itself out as qualified to engage in barbering or operating as a barbershop.<sup>2</sup>

Upon a finding of unlawful practice made pursuant to RSA 310-A:1-m and RSA 310:13, by a preponderance of the evidence, the Board takes the following action:

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<sup>1</sup> RSA 310-A:1-m was repealed as of 07/14/23 but was in effect when the alleged unlicensed practice occurred.

<sup>2</sup> Under the plain wording of RSA 313-A:22, II, the Respondent could not have committed professional misconduct:

The board may undertake disciplinary proceedings:

- (a) Upon its own initiative; or
- (b) Upon written complaint of any person which charges that ***a person licensed by the board has committed misconduct under paragraph II*** and which specifies the grounds therefor.
- (c) In an action concerning a registered tanning facility, upon written complaint from any person which charges a registered tanning facility or operator has violated any provision of [RSA 313-A:26-34](#).

RSA 313-A:22, II (emphasis added).

1. Pursuant to RSA 310-A:1-m, VIII(b) and RSA 310:13<sup>3</sup>, the Board imposes a fine of \$4,620.00.
2. Pursuant to RSA 310-A:1-m, VIII(c) and RSA 310:13, the Board, the state's attorney general, or a prosecuting attorney of any county or municipality where the act of unlawful practice takes place is hereby authorized to maintain an action to enjoin the Respondent from continuing to do acts of unlawful practice. An injunction without bond is available to the Board.

**VI. CONCLUSION AND DECISION:**

Pursuant to RSA 310-A:1-m and RSA 310:13, the Presiding Officer and Board hereby makes the herein finding of unlawful practice and takes the action noted herein.

DATED: 11/29/2023

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

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<sup>3</sup> Regardless of which statute applies, the Board's proposed sanctions are authorized. RSA 310:13 became effective 07/01/23 and RSA 310-A:1-m was repealed 07/14/23.