

**STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS
121 SOUTH FRUIT ST
CONCORD, NEW HAMPSHIRE 03301**

In the Matter of:
Cristian Rios
Personal Master Barber License Number 19861
Shop License Number 3317
(Adjudicatory Proceedings)

Docket No. 2014-07

DECISION AND ORDER

By the Board: Holly Rodrigues, Chair and Presiding Officer
Gary Trottier, Vice Chairman
Christine Infantine, Board Member
Michelle Kapos, Board Member
Deborah Robinson, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Sandra Hodgdon, Board Inspector
Beulah Stockman, Board Inspector
Kathryn Wantuck, Executive Director
Cristian Rios, Respondent

BACKGROUND

On March 3, 2014 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Cristian Rios ("Respondent") had violated RSA 313-A:22, II (c), RSA 313-A:22 II (d), RSA 313-A:22 II (i), RSA 313-A:22 II (g) and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 501.02 (e) and 501.02 (h).

As set forth in the Notice of Hearing, the purpose of the hearing was to determine whether the Respondent violated RSA 313-A:22 II (c), (d), or (i) by allowing unlicensed individuals to work at his shop, RSA 313-A II (g) by having willful or repeated violations of the Board's statutes, Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner, and Bar 501.02 (h) by aiding or abetting the practice of persons who were not duly licensed.

The Notice of Hearing noticed the hearing for 10:30 am on April 14, 2014. The Respondent appeared for the hearing as scheduled.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's 6 (six) exhibits:

- Exhibit 1, Application for licensing of VIP Barbershop Lounge.
- Exhibit 2, New shop licensing inspection form dated April 21, 2010.
- Exhibit 3, Shop Inspection Form dated March 6, 2012.
- Exhibit 4, Shop Inspection Form dated January 28, 2013.
- Exhibit 5, Shop Inspection Form dated October 24, 2013.
- Exhibit 6, Shop Inspection Form dated February 26, 2014.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant master barber licenses. See RSA 313-A:12. On September 3, 2008, the Board granted the Respondent a license to practice master barbering in the State of New Hampshire. The Respondent holds master barber license number 19861. The manicuring license is the Respondent's personal license.

The Board has authority to issue shop licenses. See RSA 313-A:19. On April 21, 2010, the Board granted the Respondent a shop license for VIP Barbershop Lounge ("VIP"). The Respondent holds shop license number 3317.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are "to enter and make reasonable examination and inspection of any salon...during business hours for the purpose of ascertaining whether or not the administrative rules of the Board and the provisions of this chapter are being observed." See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10 (converting violation points to administrative fines). For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

Kathryn Wantuck ("Ms. Wantuck"), Executive Director for the Board, testified at the hearing. Ms. Wantuck identified Exhibit 1 as the initial shop application for VIP. See Exhibit 1. Ms. Wantuck also identified Exhibit 2 as the shop inspection form completed at the opening of the barbershop. See Exhibit 2. Ms. Wantuck identified Exhibit 3 as a standard inspection form completed at an inspection of VIP on March 6, 2012. See Exhibit 3. Ms. Wantuck testified that the inspector, George Cacavas ("Inspector Cacavas") who performed the inspection, has since retired. Ms. Wantuck testified that during the inspection on March 6, 2012, Inspector Cacavas found that apprentice Melvin Laureano was working with an expired license, was not properly supervised, and had not submitted hour sheets and tests as required, Mike Laplante was working

with an expired license, and Joebenny Laureano was working without a license. Inspector Cacavas assessed fines for the violations.

Inspector Beulah Stockman (“Inspector Stockman”) testified at the hearing on an inspection she conducted on January 28, 2013. See Exhibit 4. Inspector Stockman testified she found numerous clipper guides and blades that were covered in grime and assessed a fine for the sanitation violations. Inspector Stockman noted on the inspection form that the blades were “nasty”. Inspector Stockman further testified that she assessed a fine for an individual who did not have a license and appeared to be working.

Inspector Sandra Hodgdon (“Inspector Hodgdon”) testified at the hearing on an inspection she conducted on October 24, 2013. See Exhibit 5. Inspector Hodgdon testified she assessed a fine for dirty clipper guides and an unlicensed individual working by the name of Willy Diaz. Inspector Hodgdon further testified on an inspection she conducted on February 26, 2014. See Exhibit 6. Inspector Hodgdon assessed a fine for two individuals working without a license, Willy Diaz and Joebenny Laureano.

II. Respondent’s Case

Mr. Rios testified he had started VIP with a partner, Melvin Laureano, who moved back to Puerto Rico and left him with all the responsibilities of the shop. The Respondent further testified that Mike Laplante did not work for him any longer and he was not working when the expired license was posted, Willy Diaz has sent in apprenticeship paperwork, and Joebenny Laureano was signed up for the licensure examination.

III. The Board’s Questions

In response to the Board’s questions, the Respondent testified that he took his license seriously and has paid his fines except for the last fine issued on February 26, 2014. The Respondent testified he has a difficult time as the only owner. The Respondent further testified he was aware he was breaking the law by allowing unlicensed individuals to work, but the workers are all now in process of getting a license. The Respondent stated he tells his employees to clean, but they do not listen. He compared it to having children and he has to act like their father. The Respondent also testified his unlicensed employees were paying rent for the space in his shop. The Respondent testified he has a difficult time finding qualified licensed barbers.

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. In addition to making a specific finding that the above Background Narrative was true, the Board found that the inspection reports showed multiple fines to the shop over a period of years for unlicensed workers and sanitation violations including dirty clipper guides and blades. The Board found Ms.

Wantuck, Inspector Stockman, and Inspector Hodgdon to be professional and credible. The Board found the entire narrative, in the above-captioned "Hearing Testimony Section I. Hearing Counsel's Case" to be true.

RULINGS OF LAW

The Board makes the following rulings of law:

1. On or about March 6, 2012, the Respondent violated RSA 313-A:22, II (c), (d), and (i) and Bar 501.02 (h) by committing professional misconduct for allowing an unlicensed individual to work at VIP, allowing an apprentice to work with an expired license, and not properly supervising an apprentice.
2. On or about January 28, 2013, the Respondent violated Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner.
3. On or about January 28, 2013, the Respondent violated RSA 313-A:22 II (c), (d), and (i) and/or Bar 501.02(h) by committing professional misconduct allowing an unlicensed individual to work.
4. On or about October 24, 2013, the Respondent violated RSA 313-A:22, II (c), (d), and (i) and/or Bar 501.02 (h) by committing professional misconduct by allowing an unlicensed individual to work.
5. On or about October 24, 2013, the Respondent violated Bar 501.02 (e) by failing to maintain his shop in a sanitary and hygienic manner.
6. On or about February 26, 2014, the Respondent violated RSA 313-A:22, II (c), (d), and(i) and/or Bar 501.02 (h) by committing professional misconduct allowing two unlicensed individuals to work.

DISCUSSION AND CONCLUSION

The Board has the authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health and safety. RSA 313-A:22; Bar 402.01.

The Board has determined that the Respondent has engaged in professional misconduct by failing to maintain his shop, VIP, in a sanitary and hygienic manner. The Board has also concluded that the Respondent has engaged in professional misconduct by repeatedly allowing unlicensed individuals to work in VIP. The Board found the inspection reports that were entered into evidence to be valid, unbiased and accurate. The Board reviewed that three different inspectors signed the reports, and inspectors routinely give direction to salon owners on how to

correct violations at the time of the inspection. The Board finds the fines imposed at each inspection demonstrate a repeated, willful violation of the Board's Administrative Rules.

The Board accepts the Respondent's testimony that the unlicensed individuals are currently working towards licensure, however the Board finds they did not do so until after a Notice of Hearing was issued.

The Board concluded that the Respondent should no longer have apprentices under his supervision due to the continued violations of the Administrative Rules. The Board concluded the Respondent does not possess the skills to properly instruct someone learning the profession to follow Board rules and regulation. The Respondent has been fined for not properly supervising an apprentice and for not submitting hour sheets and tests as required.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 including (1) failure to maintain his shop in a sanitary and hygienic manner (2) failure to employ properly licensed individuals.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED the Respondent's personal and shop licenses are subject to a period of PROBATION for 5 years.

IT IS FURTHER ORDERED, during the probationary period, the Respondent shall not have any further apprentices under his direct supervision.

IT IS FURTHER ORDERED, that Willy Diaz's apprentice registration application for apprenticing under the Respondent is denied.

IT IS FURTHER ORDERED, that any further fines issued to the Respondent or VIP for any violation in excess of 400 points will automatically result in a hearing order for revocation of his shop and personal licenses.

IT IS FURTHER ORDERED, that should VIP be sold to another owner, the shop probationary period will transfer to the new owner.

IT IS FURTHER ORDERED, that the Respondent shall pay the one-thousand dollar (\$1000.00) fine assessed on February 28, 2014 and the five-hundred sixty-six dollar (\$566.00) fine assessed on October 24, 2013 to the Board within 90 days of the effective date of this order. Payment shall be made in a single payment for a total amount of one-thousand five-hundred sixty-six dollars (\$1566.00) by a certified bank check or money order made payable to "Treasurer State of New Hampshire" and delivered to the Board's office at 121 South Fruit St, Concord NH, 03301.

IT IS FURTHER ORDERED, that failure to pay these fines within 90 days of the effective date of this order may result in legal action necessary to enforce this obligation.

IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A, 22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date as authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date: 5/5/14


Kathryn Wantuck, Executive Director
Authorized Representative of the Board