

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

BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS

**In Re: The Bearded Man Barbershop
Shop License #4427**

**Owner: David Le
Barber License #30541**

Docket No.: 23-BAR-035

NOTICE OF DECISION DATED 12/18/2023

Enclosed please find a copy of the Board's Order dated 12/18/2023 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 – 12/12/23

I. PARTICIPANTS:

Board Members and Support Staff and Counsel:

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

Talia Wilson, OPLC Board Administrator
Teresa Boyer, OPLC Board Administrator
Attorney Elizabeth Eaton, OPLC Board Counsel
Attorney Cassandra Brown, OPLC Board Counsel

Presiding Officer:

Attorney Nikolas Frye, OPLC Hearings Examiner

Parties:

Attorney Marissa Schuetz, Hearing Counsel
Jack Le, Licensee and Shop Owner

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 6/26/23 the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”) reviewed a complaint against David Le’s The Bearded Man Barbershop (“Licensee”) and referred the

complaint for investigation by the New Hampshire Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”). On 8/18/23, OPLC Enforcement performed an inspection of the shop, which resulted in 1,128 violations points for alleged health, sanitation, licensing, and apprentice issues. On 9/18/23 the Board reviewed the inspection report and voted to initiate an adjudicative proceeding. A final hearing was held on 12/12/23 at 9:30 AM EST. This Final Order and Decision follows.

III. SUMMARY OF THE PROPOSED EVIDENCE AND EVIDENTIARY RULINGS:

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

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

Exhibit 1	June 26, 2023 23-BAR-006 Settlement Agreement	HC001
Exhibit 2	May 3, 2023 Complaint	HC008
Exhibit 3	August 18, 2023 Shop Inspection Report	HC010
Exhibit 4	September 9, 2023 Report of Investigation	HC019

B. No exhibits were submitted by the Licensee.

C. Sworn testimony was received from:

1. Sandra Hodgdon, OPLC Chief Inspector (called by Hearing Counsel)
2. David Le, Licensee (called by Licensee)
3. Steve McCammon (called by Licensee)

Exhibits 1-4 were fully admitted by the Presiding Officer after hearing offers of proof from Hearing Counsel and objections from the Licensee. The Presiding Officer found and concluded that Exhibits 1-4 are material and relevant to the proceeding and the Licensee’s disagreements over what the exhibits said could be raised by the Licensee during the hearing.

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The hearing was 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 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 related sanitation, health, and/or safety violations as set out in the inspection report and/or memorandum dated 8/18/2023.
- (2) Whether or not the Licensee violated RSA 313-A:22, II(c) and/or RSA 313-A:22, II(i) (*see* Rules 301.04, 302.07, 404.01, 404.09, 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 or apprenticeship violations as set out in the inspection report and/or memorandum, dated 8/18/2023.
- (3) If the Board makes a finding of misconduct pursuant to issues 1 and/or 2 above, whether and to what extent the Licensee 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 issues 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)).

NOH at II.(c).

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

HEARING COUNSEL'S CASE-IN-CHIEF:

Sandra Hodgdon, OPLC Chief Inspector for the Board

Sandra Hodgdon testified that she is the OPLC Chief Inspector for the Board and discussed her duties and responsibilities in that capacity. According to Ms. Hodgdon's testimony, she conducted an inspection of the Licensee's premises on 08/18/23 because OPLC Enforcement had received a 05/03/23 complaint related to the shop. Ms. Hodgdon next reviewed her 08/13/23 inspection report and explained what she observed in the Licensee's shop that resulted in her issuing 1128 violation points. The inspection report contains a series of photographs that were not discussed during the testimony. Ms. Hodgdon also referenced a past settlement agreement in which the Licensee was directed to take a sanitation class. She stated that the information she received on the day of the inspection was that the Licensee had signed-up for a class but had not taken it yet.

Hearing Counsel also presented Exhibits 1-4, which included a June 2023 Settlement Agreement the Licensee entered into with the Board in docket #23-BAR-006.

LICENSEE’S CASE-IN-CHIEF:

Steve McCammon

Mr. McCammon testified that computer and technological issues (hacking and/or cyber identify theft) at the shop and he and Mr. Le’s personal office had made things hectic for the Licensee in late August of 2023. He stated that shortly thereafter the Licensee lost a large share of barbers and shut down.

Mr. McCammon also addressed Exhibit 1, which is the settlement agreement in docket #23-BAR-006. He said that the Licensee had paid the fine and taken the sanitation course late because he did not receive notice that the Board had approved the proposed course until 07/28/23. Mr. McCammon explained that the Licensee has since taken the test and passed it but acknowledged the tardiness in completing the coursework. He stated the Licensee had “just started up” on 12/01/23.

David Le, Licensee

The Licensee described the shop and his work as “always busy,” “chaotic,” and “a blessing.” He explained that sometimes employees “cut and leave and come back” but “everyone is happy.” Upon cross examination, the Licensee stated that he has been a barber for 20 years; owned the shop for 6 years; and previously owned another shop for an additional year. He assured the Board that he is now familiar with the regulations and has taken a sanitation course recently but could not recall taking one before that class. According to his testimony, he cleans the shop every day. The Licensee also acknowledged the alleged hacking/cyber-attack noted by Mr. McCammon occurred around 08/21/23 and the inspection took place on 08/18/23.

Upon Board questioning, the Licensee was unclear as to how many apprentices he has. First, he said “4 or 5”, but that number changed to “2” after speaking with Mr. McCammon during testimony.

Additionally, the Licensee was unclear how many licensed shop instructors were present in his shop. First, he testified two, but then said: “just me.” The Licensee also described some of his cleaning protocols, and admitted his employees only followed the Board’s cleaning requirements about half of the time.

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

After reviewing all the evidence and considering the presentation and demeanor of all the witnesses, the Board makes the following findings of facts:

1. On August 18, 2023, inspectors Sandra Hodgdon and Shannon Avery performed an inspection in response to a complaint at the licensee shop and found the following violations totaling 1,128 points:
 - a. Floors, walls, woodwork, and furniture not cleaned. *Bar 302.05*
 - b. 25 Implements & Appliances not cleaned, disinfected, and stored in enclosed container (*Bar 302.07*),
 - c. 3 individuals providing services with an expired license. (*RSA 313-A:19 and Bar 404.08(c)(5)*)
 - d. Individual performing services without NH licenses. (*RSA 313-A:19 and Bar 404.08(c)(5)*)
 - e. Apprentice attendance records and tests not current with the Board, and apprentice not wearing a name tag. (*Bar 301.04*)
2. The shop’s disciplinary history is as follows:
 - a. 10/12/22 a routine inspection resulted in 527 points. A Settlement Agreement was approved by the Board on or about June 26, 2023.
 - i. As of 12/12/23 Respondent has not provided evidence of completion of Continuing Education as required in the Settlement Agreement.
3. David Le is the only licensed instructor in the shop. The inspection report from 8/18/23 listed three apprentices. Based on testimony, it is unclear how many apprentices Mr. Le instructs.
4. The Licensee acknowledged delay complying with settlement agreement but did complete and received email certificate.
5. Mr. Le testified that he instructed his employees to clean properly in between each client but did not make sure they followed proper instructions as outlined in the Board’s administrative rules. It only happens about “half the time.”
6. Mr. Le cleans the shop at the end of the day by himself.

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

1. The Licensee committed professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and RSA 313-A:22, II(i) (*see* Bar Rules 302.05, 302.07, 501.01, and 501.02) by operating a shop with the sanitation, health, and safety violations as set forth in the inspection report and memorandum dated 8/18/2023.
2. The Licensee violated RSA 313-A:22, II(c) and RSA 313-A:22, II(i) (*see* Bar Rules 301.04, 302.07, 404.01, 404.09, and 501.02; and RSA 313-A:17 and RSA 313-A:9) by operating a shop with the licensing and apprenticeship violations set forth in the inspection report and memorandum, dated 8/18/2023.
3. Pursuant to Plc Rule 206.24, Hearing Counsel has proven all elements of the misconduct found above by clear and convincing evidence.

Upon a finding of misconduct made pursuant to RSA 313-A:22, II, by clear and convincing evidence, the Board imposes the following disciplinary action against the Licensee(s) pursuant to RSA 310:12, I:

- A. Pursuant to RSA 310:12, I(a), David Le's Barber License #30541 and the Bearded Man Barbershop shop license #4427 is **REPRIMANDED**.
- B. Pursuant RSA 310:12, I(b), David Le's Barbershop instructor #30541 license is **REVOKED**.
- C. Pursuant to RSA 310:12, I(b), The Bearded Man Barbershop shop license #4427 and David Le's Barber license #30541 is **SUSPENDED** until the shop has successfully passed reinspection.
- D. Pursuant to RSA 310:12, I(d), when the suspension for the shop noted in paragraph C ends, The Bearded Man Barbershop shop license #4427 shall be on **PROBATION** for a period of two years subject to the following terms:
 - a. Any inspection during the probationary period resulting in over one hundred (100) points for violation(s) of the Board's rules shall be a violation of probation;
 - b. A violation of probation shall also constitute misconduct pursuant to RSA 313-A:22 and may form the basis for additional disciplinary sanctions after appropriate notice and opportunity for a hearing pursuant to RSA 310:10 and Plc Rules 206.06 et seq.;
 - c. The Board reserves the right to order an immediate emergency suspension pending an adjudicative proceeding pursuant to RSA 310:12 and Plc Rules 206.07 et seq.; and,

- d. The Board is putting the Respondent on notice that it may enforce this order specifically using unannounced inspections. Respondent must immediately display, in full view of the public, a full and complete copy of this Final Order near or adjacent to the shop license and past inspection forms and continue to display a copy until the conclusion of the period of probation.

- E. Pursuant to RSA 310:12, I(e), Bar Rule 404.11, and RSA 332-G:11, the Board **FINES** the Licensee in the total amount of \$1,628.00, representing the cumulative amount of the 08/18/23 Inspection Report (\$1,128.00); aggravating factors (\$500.00); and the cost of investigation (\$250.00). The administrative fines and/or cost of investigation shall be paid within 90 days of the below signed date of this final order. No separate invoice will follow.

VI. CONCLUSION AND DECISION:

Pursuant to RSA 319-C:12, and Rule 405 et seq., the Presiding Officer and Board hereby makes the findings of professional misconduct noted herein and the Board administers the discipline outlined above.

DATED: 12/18/2023

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