

BEFORE THE BOARD OF BARBERS AND COSMETOLOGISTS
FOR THE STATE OF NEW MEXICO

IN THE MATTER OF:

Case no. BC-18-36-INS

Mark Gonzales,
License no. MB15495

d/b/a Mark Pardo Salon Spa,
License no. EST09033,

Respondent.

FINAL DECISION AND ORDER

THIS MATTER came before a quorum of the New Mexico Board of Barbers and Cosmetologists (hereinafter “Board”) at a meeting held on January 8, 2020, at the New Mexico Gaming Control Board, located at 4900 Alameda Blvd. NE, Albuquerque, N.M., 87113, regarding alleged violations by the Respondent of the Barbers and Cosmetologists Act, NMSA 1978, Sections 61-17A-1 to -25 (1993, as amended through 2019). A formal evidentiary hearing was held on December 6, 2019, at the New Mexico Workers’ Compensation Administration, by designated Hearing Officer Frantz, pursuant to the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 to -34 (1957, as amended through 2017), the Barbers and Cosmetologists Act, and the Board’s rules. The Board has decided to take disciplinary action, which is based on the following:

FINDINGS OF FACT

1. Respondent was, at all relevant times, licensed by the Board to practice as a master barber, license no. MB 15495, pursuant to the Barbers and Cosmetologists Act (“Act”), NMSA 1978, Sections 61-17A-1 to -25 (1993, as amended through 2009).
2. Respondent’s salon, Mark Pardo Salon Spa, was at all relevant times licensed by the Board to operate as an establishment, license no. EST09033, pursuant to the Act.
3. Two exhibits were admitted by stipulation at the hearing:

- a. Exhibit 1, former compliance officer Clyde Segura's complaint regarding his inspection of Mark Pardo Salon Spa; and
 - b. Exhibit A, cleaning and disinfectant logs from Mark Pardo Salon Spa.
4. Cres Archuleta, lead compliance supervisor at the Regulation and Licensing Department ("RLD"), testified regarding the August 7, 2018 inspection of Mark Pardo Salon Spa:
 - a. Clyde Segura, a former RLD inspector, conducted the August 7, 2018 inspection. Mr. Segura did not testify at the hearing.
 - b. Mr. Archuleta testified that Mr. Segura's inspection report showed Mark Pardo Salon Spa's establishment license, referenced above, was active as of the date of the formal hearing (December 6, 2019). Respondent was the supervisor of the establishment at the time of the inspection. *See* Hearing Exhibit 1.
 - c. Mr. Archuleta testified that Mr. Segura's inspection report showed that Mark Pardo Salon Spa had engaged in repeated use of single-use instruments, specifically emery boards and buffing blocks. *See* Hearing Exhibit 1.
 - d. Mr. Archuleta testified that Mr. Segura's inspection report showed Mark Pardo Salon Spa failed to clean and disinfect three (3) pedicure tubs. *See* Hearing Exhibit 1.
 - e. Mr. Archuleta testified that Mr. Segura's inspection report showed Mark Pardo Salon Spa had two (2) employees working at the establishment with expired licenses. *See* Hearing Exhibit 1.
 - f. Mr. Archuleta testified that Mr. Segura's inspection report showed Mark Pardo Salon Spa failed to post Respondent's supervisory license. *See* Hearing Exhibit 1.
5. No photographs were introduced into evidence to prove the two (2) employees' expired licenses at the establishment during the inspection, referenced in Paragraph 5(e), above.
6. The quality of the photographs admitted into evidence as part of Exhibit 1 to prove the dirtiness of the pedicure tubs were poor, and therefore deemed inconclusive.

7. The photographs admitted into evidence as part of Exhibit 1 to prove repeated use of single-use instruments were ambiguous with regard to the time of service. Respondent and Respondent's witness and Team Lead Manager at Mark Pardo Salon Spa, Emelia Lopez, stated the implements were set on the countertop for immediate future use by a client who was washing her hands and were not reused.
8. Respondent's cleaning and disinfectant logs admitted into evidence as part of Exhibit A were inapplicable to the date of inspection and were incomplete with regard to the disinfectant used and license number of the employee(s) engaged in the disinfectant process.
9. Ms. Lopez testified the establishment's management at the time of inspection had difficulty complying with state regulations, but as its current manager, she has since brought the establishment into compliance.
10. Ms. Lopez further testified the two (2) employees whose licenses were expired on the date of inspection have since been reinstated and are now current.
11. Respondent, in his presentation of his case to the Board and closing statement, effectively admitted the allegation of the two (2) employees working on expired licenses.
12. In his closing statement, Respondent requested leniency from the Board.
 - a. Respondent stated he previously served on the Board and understands he must be held accountable.
 - b. Respondent stated he has operated his business for forty-five (45) years.
 - c. Respondent acknowledged some, but not all, of the violations identified in inspection report, but stated he has made every effort to correct them.
 - d. Respondent stated he operates a number of establishments and employs a large number of employees, and pledges to continue to adhere to the Board's rules as a responsible business owner.

CONCLUSIONS OF LAW

1. As a Board licensee, Respondent is subject to the Board's jurisdiction.

2. In accordance with NMSA 1978, Section 61-1-3, the Board provided Respondent proper notice and a hearing with regard to the allegations against him. Further, Respondent was provided timely notice of the hearing and advised of his rights.
3. The Board is required to establish and enforce sanitary and safety regulations. *See* NMSA 1978, §§ 61-17A-7(A), 61-17A-21(A)(2). Board rules explicitly require a log to be maintained for all pedicure tubs on a premises, which is to include a legible signature, license number of the person disinfecting the tub, the time and date of the disinfection process, and the name of the disinfectant used. *See* 16.34.7.8(H)(8) NMAC.
4. The Board is granted authority and discretion to license individuals and establishments pursuant to the Barbers and Cosmetologists Act. *See* NMSA 1978, §§ 61-17A-5, 61-17A-7 to -8, 61-17A-15, 61-17A-21. Licenses are required to be displayed “conspicuously at the holder’s place of business.” NMSA 1978, § 61-17A-18.
5. Respondent violated 16.34.7.8(H)(8) NMAC by a preponderance of the evidence by failing to properly maintain pedicure tub logs, not displaying licenses properly, and allowing employees to work on expired licenses. As such, the Board may take disciplinary action under NMSA 1978, Sections 61-17A-21(A) and 61-1-3.

ORDER

Based on the Findings of Fact and Conclusions of Law stated above, a quorum of the Board voted to impose the following discipline:

1. Respondent shall pay a fine in the amount of \$1,000.00, to be paid no later than sixty (60) days from the issuance of this Final Decision and Order; and
2. A re-inspection of the Mark Pardo Salon Spa is to occur no later than sixty (60) days from the issuance of this Final Decision and Order.

Failure to comply with the terms of this Order, including failure to correct identified violations contained herein, will result in further Board action. Any violation of this Order will result in the immediate, automatic filing of an administrative Notice of Non-Compliance by Board staff. Upon the

filing of a Notice of Non-Compliance, the matter shall be scheduled for the next public hearing of the Board, at which time the Board shall hear from Board staff regarding the alleged non-compliance. Respondent shall have the opportunity to address the allegations or offer any other relevant argument or evidence regarding the reasons for non-compliance. Such argument or evidence may be provided in writing prior to the meeting or in person at the Board meeting. Any presentation regarding the Notice of Non-Compliance shall be limited to evidence surrounding Respondent's alleged failure to comply with the Order. Upon finding such violation occurred, the Board may suspend Respondent's license(s), provided this suspension may only remain in effect until such time as Respondent has complied with the terms of this Order, or take other enforcement action as permitted by law. If Respondent's non-compliance constitutes acts that are prohibited under the Board's statute or rules, the Board may also initiate a new disciplinary action and refer that matter for administrative prosecution.

IT IS SO ORDERED.

_____/s/ Gabriel Garduno_____
Gabriel Garduno, Chair
New Mexico Board of Barbers and Cosmetologists

_____/1/4/2020_____
Date

JUDICIAL REVIEW

This Order constitutes a final decision for purposes of initiating any contemplated judicial review pursuant to the provisions of the Uniform Licensing Act, NMSA 1978, Section 61-1-17 and 39-3-1.1. An aggrieved party has the right to judicial review of this Order by filing a notice of appeal under Rule 1-074 NMRA within thirty (30) days of the date of the filing of the final decision. Any pleadings filed with the District Court must be served on the Board's counsel, Assistant Attorney General Alexis Shannez Dudelczyk, sdudelczyk@nmag.gov.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document and any attachments were sent via certified mail, return receipt requested, to Respondent Mark Gonzales d/b/a Mark Pardo Salon at his last known address of record on January 4, 2020.

_____/s/ Elisa Salazar_____
Elisa Salazar, Compliance Liaison