

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

IN THE MATTER OF:

Metro Barber School #2 (Gallup),
Application No. 1105349

Case No. BC-18-13-APP

Respondent.

FINAL ORDER DENYING APPLICATION

THIS MATTER came before a quorum of the Board of Barbers and Cosmetologists (“Board”) at an open meeting held on Wednesday, January 8, 2020, at the New Mexico Gaming Control Board, located at 4900 Alameda Blvd. NE, Albuquerque, NM 87113, on a complaint filed against Metro Barber School #2 (“Respondent”), owned by Miguel Cisneros, alleging numerous violations of the Barbers and Cosmetologists Act, NMSA 1978, Sections 61-17A-1 through -25 (1993, as amended through 2019) (the “Act”). A formal evidentiary hearing was conducted by designated Hearing Officer and Board Member Arlene Frantz, pursuant to the Uniform Licensing Act (“ULA”), NMSA 1978 Sections 61-1-4 through -34 (1957, as amended through 2019), the Act, and the Board’s rules. The Board, having familiarized itself with the entire record, including the Hearing Officer’s Report, voted to adopt the Hearing Officer’s Proposed Findings of Fact, find the Respondent to have violated the Act and the Board’s rules, and deny Respondent’s application for licensure. Pursuant to the Act and the ULA, the Board issues the following:

FINDINGS OF FACT

The Board hereby adopts the Hearing Officer’s Proposed Findings of Fact, numbered 1 through 28, in its entirety, and incorporates them into this Final Decision and Order as if stated herein.

CONCLUSIONS OF LAW

1. Respondent applied for a license with the Board and is therefore subject to jurisdiction of the Board.
2. The Board voted to issue an NCA to Respondent stating it had sufficient evidence to justify denying Respondent's application for licensure based on a failure to satisfy the Board of Respondent's qualifications to be issued a license.
3. The NCA alleged that Respondent engaged in unlicensed practice, among other violations of the Act and the Board's rules.
4. Respondent requested a formal evidentiary hearing in response to the NCA, which was held on October 18, 2019. Respondent was represented by legal counsel.
5. During the hearing, Respondent admitted to all of the allegations in the NCA. He also requested leniency from the Board because the violations outlined in the NCA were not "entirely intentional," as well as the fact that the Board, in his opinion, did not review and make a determination on his application for licensure in a timely manner.
6. The Board has properly complied with all notice and procedural requirements under the Barbers and Cosmetologists Act and the ULA.
7. Pursuant to the ULA, Respondent had the burden of satisfying the Board that Respondent had the qualifications to be licensed. *See* § 61-1-4(C) (providing that "the burden of satisfying the board of the applicant's qualifications shall be upon the applicant").
8. A preponderance of the evidence shows that Respondent engaged in unlicensed practice in violation of Sections 61-17A-5(B) and 61-1-3.2.
9. A preponderance of the evidence shows that, while engaged in unlicensed practice, Respondent engaged in in a number of sanitary violations in violation of 16.34.7.9 NMAC,

including the failure to sweep up hair cuttings after each haircut, see 16.34.7.9(A)(15) NMAC, the failure to clean and disinfect multi-use tools and implements, see 16.34.7.9(B)(2) and (8) NMAC, and the failure to store implements in enclosed containers. See 16.34.7.9(A)(31), (32) and (33) NMAC.

10. A preponderance of the evidence shows that, while engaged in unlicensed practice, Respondent failed to maintain accurate and complete records of clock hour training in violation of 16.34.8.13(C) NMAC.
11. A preponderance of the evidence shows that, while engaged in unlicensed practice, Respondent employed and utilized an instructor who taught the practice of barbering without holding a valid barber license issued by the Board, in violation of 16.34.8.15(A) NMAC, 16.34.5.8(B) NMAC, and 16.34.5.14 NMAC.
12. The Act provides that the Board “shall ... refuse to issue ... a license” upon finding that an applicant has committed any “illegal activities in an establishment, enterprise, [or] school,” a violation of the Act itself, or a violation of “any sanitary regulation promulgated by the board.” Section 61-17A-21(A).
13. The Board finds that Respondent failed to satisfy the burden of proof that he has the qualifications to be granted a license.
14. Having reviewed the matter, the Board finds there is sufficient evidence to justify the Board in denying Respondent’s application for licensure as contemplated in the NCA.

ORDER

Based on the above Findings of Fact and Conclusions of Law, a quorum of the Board voted to deny Respondent’s application for licensure.

IT IS THEREFORE ORDERED that Respondent’s application for licensure is hereby DENIED.

IT IS SO ORDERED.

/s/ Gabriel Garduno
Gabriel Garduno, Chair
Board of Barbers and Cosmetologists

1/16/2020
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 NMSA 1978, Section 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 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 was mailed by certified mail on the date below to:

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1/16/2020

Elisa Salazar
Compliance Liaison