

**BEFORE THE NEW MEXICO STATE BOARD
OF BODY ART PRACTITIONERS**

IN THE MATTER OF:

Case No. BA-17-11-COM

505 INK

License No. EST000210

FRANKIE GUTIERREZ

Owner,

Respondent.

NOTICE OF CONTEMPLATED ACTION

TAKE NOTICE that the Board of Body Art Practitioners (“Board”) is contemplating taking disciplinary action against Frankie Gutierrez d/b/a 505 INK (“Respondent”). The Board has before it sufficient evidence that, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board in revoking, suspending or taking other disciplinary action against Respondent. If Respondent does not request a hearing within twenty (20) days after service of this Notice of Contemplated Action (“Notice”), the Board will proceed to take the action contemplated in this Notice, and such action will be final and not subject to judicial review.

APPLICABLE LAW

1. Respondent is licensed pursuant to the Body Art Safe Practices Act, § 61-17(B)-1 to -18, NMSA 1978, and as such is subject to the jurisdiction of the Board pursuant to the Body Art Safe Practices Act and the Uniform Licensing Act (“ULA”), NMSA 1978, § 61-1-1 to -34 (1957, as amended through 2017).
2. This Notice is based upon the following alleged statutory or regulatory violation(s):
 - a. On June 28, 2017, an oral complaint was filed with the Board, alleging that an apprentice named Shawn was performing tattoos and piercings at 505 INK at the corner of Coors and Sequoia in Albuquerque.
 - b. On June 6, 2018, Inspector Clyde Segura went to 505 INK (“the shop”) at 3296 Coors Boulevard in Albuquerque and spoke with Respondent. Respondent was licensed as a tattoo artist (TA102) with the Board at all times relevant to the allegations in this Notice of Contemplated Action. As Inspector Segura was checking licenses, Respondent went into the piercing room and told another employee the inspector was there. Both the employee and a man whom Respondent identified as a customer exited the room immediately and the customer left the shop. When Inspector Segura asked

who the employee was, Respondent stated that his name was Shawn. Inspector Segura then asked Respondent for Shawn's license. Respondent said that Shawn didn't have one but that Shawn's paperwork was at the Regulation and Licensing Department and he was waiting for a response. Inspector Segura told Respondent that Shawn was not allowed to perform any kind of work if he was not licensed. Both Respondent and Shawn told the inspector that Shawn was "only setting up the room for a piercing because [he was] an apprentice."

- c. A review of Respondent's social media postings on *Yelp*, which was claimed by 505 INK, showed that as of May 30, 2017, "KV" complained that Respondent had had Shawn pierce her niece and her niece's friend and that Shawn had bungled both procedures, leaving bruising on one of the individuals. She stated that another experienced piercer had to remove the *piercings* with pliers and that when "KV" refused to refund the kids their money since they ended up without piercings, he told her to go to the state board to report him, and she was doing just that.
- d. Upon further review, the inspector learned that Shawn Anderson had submitted paperwork for an apprentice license and that Respondent had submitted paperwork for a sponsorship license. Soon after, Mr. Anderson received his apprentice license (BAAP000461), which was superseded by a tattoo artist license (TA522), issued on September 5, 2018, and current to date.
- e. Previously, on January 28, 2016, Inspector Maria Lopez inspected 505 INK and found that no establishment license was posted, and that Respondent had failed to post his tattoo license and his body piercing license (BPA00028) at the shop, in violation of 16.36.1.9(A) NMAC, which states:
 - A. All official board issued licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public upon entry of the establishment.
- f. Inspector Lopez found that contaminated waste was not disposed of properly, nor were waste records maintained, in violation of 16.36.5.8(H), which states:
 - H. Contaminated waste, which may release liquid blood or body fluids when compressed or may release dried blood or body fluids when handled must be placed in an approved "red" bag which is marked with the international "biohazard" symbol. It must then be disposed of by an approved medical waste facility pursuant to federal and state regulations including but not limited to 29 CFR 1910.1030 and New Mexico solid waste management regulations promulgated by the New Mexico environment department. Sharps ready for disposal shall 16.36.5 NMAC 2 be disposed of in approved sharps containers. Contaminated waste which does not

release liquid blood or body fluids when compressed or does not release dried blood or body fluids when handled may be placed in a covered receptacle and disposed of through normal, approved disposal methods. Storage of contaminated waste on-site shall not exceed 90 days. Establishment shall maintain records of waste removal.

- g. Inspector Lopez also found food and dishes in a sink in the processing room in violation of 16.36.5.9(B), which states:

16.36.5.9 NMAC. STERILE PROCEDURES AND SANITATION.

B. All facilities that reprocess reusable instruments shall have an equipment cleaning room that is physically separated from the work stations. Facilities that use all disposable equipment shall be exempt from this requirement.

- h. Inspector Lopez also found that instruments were not properly packaged, stored, or dated with an expiration date, in violation of 16.36.5.9(C), (F), and (I).

C. After cleaning, all non-disposable instruments used for body art shall be packed individually in paper peel-packs and sterilized. All paper peel-packs shall contain either a sterilizer indicator or internal temperature indicator. Properly packaged, sterilized and stored equipment can be stored no more than one year. Paper peel-packs must be dated with an expiration date not to exceed one year. Sterile equipment may not be used after the expiration date without first repackaging and resterilizing.

D. All non-disposable instruments.

F. After sterilization, the instrument used for body art, tattooing or body piercing shall be stored in a dry, clean cabinet or other tightly covered container reserved for the storage of such instruments.

I. For body piercing and tattooing establishments primarily utilizing a Statim autoclave, reusable items shall be sterilized in an autoclave in a bulk load without sterilization pouches, previous to sterilization in the Statim autoclave, for the body piercing or tattoo procedure. Reusable instruments and single use items sterilized in a Statim autoclave cassette must be used immediately after opening the Statim autoclave cassette. The items contained in the Statim autoclave cassette shall be used for one client only and shall include use of an integrater strip.

- i. Finally, Inspector Lopez found that needles were not sterile or properly stored.

16.36.5.10 NMAC. REQUIREMENTS FOR SINGLE USE ITEMS

A. All sharps shall be sterilized prior to use and stored in paper peel-packs.

§ 61-1-3.2. Unlicensed activity; disciplinary proceedings; civil penalty

A. A person who is not licensed to engage in a profession or occupation regulated by a board is subject to disciplinary proceedings by the board.

B. A board may impose a civil penalty in an amount not to exceed one thousand dollars (\$1,000) against a person who, without a license, engages in a profession or occupation regulated by the board. In addition, the board may assess the person for administrative costs, including investigative costs and the cost of conducting a hearing.

Did Inspector catch Shawn in unlicensed activity?

§ 61-17B-5. License; application; revocation; suspension.

NMSA 1978, Section 61-17B-5 (2007, amended 2015), which states in relevant part:

A. A body artist shall obtain a body art license, and an operator shall obtain a body art establishment license, the requirements for which shall be defined by the board and shall include the requirement that a body artist applicant demonstrate that the body artist has the training and experience necessary to perform body piercing, tattooing or scarification and the requirement that a sanitary and sterile body art establishment be maintained.

...

C. An operator or body artist shall apply to the board for the issuance or renewal of a license annually and shall pay license fees established by the board. The board shall set license fees, license renewal fees and late fees in amounts necessary to administer the provisions of the Body Art Safe Practices Act. If an operator or body artist fails to renew a license for the next year, the license is void; provided that the voided license may be restored at any time during the year following the license's expiration upon the payment of the appropriate license renewal fee and a late charge not to exceed one hundred dollars (\$100) as set forth by board rules. If the operator or body artist fails to restore a license within one year following the license's expiration, the operator or body artist may request restoration of the license pursuant to rules promulgated by the board.

...

F. A current body art license or body art establishment license shall not be transferable from one person to another.

16.36.1.9 LICENSES POSTED.

A. All official board issued licenses, except identification licenses, issued by the board shall be posted where clearly visible to the public upon entry of the establishment.

Nature of the Evidence Against Respondent

3. The general nature of the evidence before the Board is as follows:
 - a. The evidence in any hearing in this case also includes, but is not limited to, testimony and documentary evidence submitted by RLD Inspectors.
 - b. The foregoing statements are general in nature and the evidence adduced or elicited at the hearing will not be limited by this summary.

Your Rights as Respondent

4. Unless Respondent requests a formal hearing, the evidence before the Board is sufficient to justify the Board in taking the contemplated action.
5. The formal hearing, if requested, will be conducted pursuant to the ULA as provided by Section 61-1-8. Section 61-1-8 provides that:
 - A. A person entitled to be heard under the Uniform Licensing shall have the right to be represented by counsel or by a licensed member of his own profession or occupation, or both; to present all relevant evidence by means of witnesses and books, papers, documents and other evidence; to examine all opposing witnesses who appear on any matter relevant to the issues; and to have subpoenas and subpoenas duces tecum issued as of right prior to the commencement of the hearing to compel discovery and the attendance of witnesses and the production of relevant books, papers, documents and other evidence upon making written request therefor to the board or hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the Board or the hearing officer. All notices issued pursuant to Section 61-1-4 NMSA 1978 shall contain a statement of these rights.
 - B. Upon written request to another party, any party is entitled to: (1) obtain the names and addresses of witnesses who will or may be called by the other party to testify at the hearing; and (2) inspect and copy any documents or items which the other party will or may introduce in evidence at the hearing.

The party to whom such a request is made shall comply with it within ten (10) days after the mailing or delivery of the request. No request shall be made less than fifteen (15) days before the hearing.

C. Any party may take depositions after service of notice in accordance with the Rules of Civil Procedure for the District Courts. Depositions may be used as in proceedings governed by those rules.

6. **If Respondent does not request a hearing in this matter, the Board will take the contemplated action by default. See § 61-1-4(D)(3). If no hearing is requested, this disciplinary action will not be subject to judicial review. See § 61-1-4(E).**
7. In order to request a hearing in this matter Respondent must deposit in the mail a certified return receipt requested letter addressed to the Board containing a request for a hearing within twenty (20) days after services of this notice. See § 61-1-4(D)(3). A written request for a hearing should be sent to the following address:

Elisa Salazar, Compliance Liaison
New Mexico Board of Body Art Practitioners
Regulation and Licensing Department
P.O. Box 25101
Santa Fe, NM 87504
(505) 476-4618

**STATE OF NEW MEXICO
BOARD OF BODY ART PRACTITIONERS**

By: /s/ Benjamin Shaw
Benjamin Shaw, Chairperson
New Mexico Board of Body Art Practitioners

Prepared by:

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CERTIFICATE OF SERVICE

A true and authentic copy of this Notice of Contemplated Action was sent to Respondent at the addresses below by United States Postal Service, Certified Mail, return receipt requested, on this __28th____ day of June, 2019.

Frankie Gutierrez
3296 Coors Blvd NW
Albuquerque, NM 87120

Certified Mail No.:9171 9690 0935 0078
6791 98
Return Receipt Requested

By:_____/s/ Elisa Salazar _____
Elisa Salazar, Compliance Liaison
New Mexico Board of Body Art Practitioners