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

IN THE MATTER OF:

Case No. BC-18-9-APP

Maria Del Ramos, License No. C046734,
a/k/a Maria Del Lourdes Ramos De Ruiz,
VIP Beauty Salon and Spa,
License No. EST113222 (expired),

Respondent.

FINAL DECISION AND DEFAULT ORDER

THIS MATTER came before a quorum of the Board of Barbers and Cosmetologists (the "Board") at an open meeting held on December 3, 2018, at the Regulation and Licensing Department, located at 5500 San Antonio Dr. NE, Albuquerque, NM 87109, based on complaints filed with the Board alleging that Maria Del Ramos and VIP Beauty Salon and Spa (hereinafter "Respondent") violated the Barbers and Cosmetologists Act, NMSA 1978, 61-17A-1 to -25 (1993, as amended through 2017) ("the Act"). No hearing was requested and the matter was presented to the Board. Upon review of the matter, the Board voted to deny the issuance of the establishment license requested by the Respondent. Pursuant to the Act, and the Uniform Licensing Act, NMSA 1978, Sections 61-1-1 through -34 (1957, as amended through 2017) ("ULA"), the Board issues the following:

FINDINGS OF FACT

1. On or about September 7, 2018 the Board conducted an inspection of VIP Salon and Spa, which led to the issuance of Notices of Contemplated Action in case numbers BC-18-9-APP, BC-18-45-COM and BC-18-46-COM (see Exhibits 1, 2, and 3). On or about September 10, 2018, Respondent signed and submitted an Establishment or Enterprise

License Application for VIP Salon and Spa, which the Board received on September 11, 2018.

2. The Board voted to issue a Notice of Contemplated Action (NCA) against Respondent on September 14, 2018, stating that the Board had sufficient evidence to justify denying the Respondent's application for an establishment license based on alleged violations of the Act. *See* Exhibit 1 (Notice of Contemplated Action, BC-18-9-APP) (September 14, 2018).
3. The NCA notified the Respondent that pursuant to Section 61-1-4(C) she had the burden of satisfying the Board of the applicant's qualifications. *See* Exhibit 1.
4. The NCA alleged that Respondent had previously engaged in a number of sanitary violations in contravention of the Act and the Board's rules, that the Respondent operated an establishment without a license in violation of the Act, and that the Respondent engaged in other practices prohibited by the Act.
5. The NCA stated that, unless explained or rebutted at a formal hearing, the alleged conduct justified the Board in denying the Respondent's application for an establishment license.
6. The Board mailed the NCA to Respondent on October 2, 2018, via certified mail, return receipt requested (USPS 9171 9690 0935 0079 1604 97), to the address on file with the Board, and the Respondent signed for said NCA. *See* Exhibit 1.
7. The ULA provides that if a licensee "does not mail a request for a hearing within the time and in the manner required by this section, the board may take the action contemplated in the notice and such action shall be final and not subject to judicial review." Section 61-1-4(E), NMSA 1978.
8. Respondent failed to request a hearing in response to the NCA issued in this matter.

CONCLUSIONS OF LAW

1. The Board has complied with all notice and other procedural requirements of the Act and the ULA.
2. The Board may proceed to take the action contemplated in the NCA and such action shall be final and not subject to judicial review, as provided by Section 61-1-4 NMSA 1978.
3. The Board by a preponderance of the evidence finds that Respondent violated Section 61-17A-5 NMSA 1978 by operating an establishment without an establishment license issued by the Board. *See* Exhibits 1, 2, and 3.
4. The Board by a preponderance of the evidence finds that Respondent violated 16.34.7.9(A) NMAC and 16.34.7.9(B) NMAC by failing to follow infection control and safety standards, including but not limited to failing to properly disinfect working tools and failure to properly dispose of sharps and blood. *See* Exhibits 1, 2, and 3.
5. The Board by a preponderance of the evidence finds that Respondent violated 16.34.7.9(D), by engaging in a prohibited practice which penetrated the dermal layer of the skin. *See* Exhibits 1, 2, and 3.
6. Pursuant to Section 61-17A-21, the Board must "refuse to issue" a license application upon finding that the applicant has committed a violation of the Act.

ORDER

Based on these Findings of Fact and Conclusions of Law, a quorum of the Board voted to deny the Respondent's establishment license application. IT IS THEREFORE ORDERED that the Respondent's application for an establishment license is DENIED.

This Order constitutes formal disciplinary action by the Board and may be reported to the applicable professional licensing national database, if any. Additionally, this Order and the original

complaint are public records and may be provided for inspection if requested, pursuant to the New Mexico Inspection of Public Records Act, NMSA 1978, Sections 14-2-1 to -12 (1947, as amended through 2018). The Board may also publish this Order or a summary of this Order to the public, which may include posting to the Board's website.

IT IS SO ORDERED.

_____ 12/25/2019

Gabriel Garduno, Chair
New Mexico Board of
Barbers and Cosmetologists

Date

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:

_____ _____

Maria Del Ramos,
a/k/a Maria Del Lourdes Ramos De Ruiz
5100 Bridges NW
Albuquerque, NM 87120
Certified Mail No. 9171 969 0935 0079 1609 78

Date

/s/ Elisa Salazar 12/25/2019

Elisa Salazar

Date

BEFORE THE STATE OF NEW MEXICO
BOARD OF BARBERS AND COSMETOLOGISTS

IN THE MATTER OF:

VIP BEAUTY SALON AND SPA
MARIA DEL RAMOS
a/k/a MARIA DEL LOURDES RAMOS DE RUIZ **Case No. BC-18-9-APP**
License No. EST113222 (expired)

Respondent.

NOTICE OF CONTEMPLATED ACTION

1. VIP Beauty Salon and Spa owner, Maria Del Ramos a/k/a Maria Del Lourdes Ramos de Ruiz (hereafter "Respondent"), is hereby notified that the New Mexico Board of Barbers and Cosmetologists (hereafter the "Board") has before it sufficient evidence which, if not rebutted or satisfactorily explained at a formal hearing, will justify the Board taking action to deny licensure or take other disciplinary action as permitted by law against Respondent's Establishment or Enterprise License Application pursuant to the Barbers and Cosmetologists Act, NMSA 1978, §§ 61-17A-1 to -25 (1993, as amended through 2013), and the Uniform Licensing Act (hereafter "ULA"), NMSA 1978, §§ 61-1-1 to -34 (1957, as amended through 2017).

2. Respondent is hereby notified that pursuant to Section 61-1-4(C) Respondent has the burden of satisfying the Board of the applicant's qualifications.

3. Respondent is also hereby notified that pursuant to Section 61-1-4(G), NMSA 1978, Licensees shall bear all costs of disciplinary proceedings unless they are excused by the board from paying all or part of the fees or if they prevail at the hearing and an action specified in Section 61-1-3, NMSA 1978 is not taken by the board.

4. Action is contemplated to impose disciplinary measures pursuant to the following statutes and regulations as well as the accompanying general allegations in support of the alleged violations:

NMSA 1978 § 61-17A-21. Grounds for refusal to issue, renew, suspend or revoke a license

A. The board shall, in accordance with the provisions of the Uniform Licensing Act, issue a fine or penalty, restrict, refuse to issue or renew or shall suspend or revoke a license for any one or more of the following causes:

(1) the commission of any offense described in the Barbers and Cosmetologists Act;

- On or about September 10, 2018, Respondent signed and submitted an Establishment or Enterprise License Application for VIP Salon and Spa, which the Board received on September 11, 2018. On or about September 7, 2018 the Board conducted an inspection of VIP Salon and Spa, which led to the issuance of Notices of Contemplated Action in case nos. BC-18-45-COM and BC-18-46-COM. Those Notices were sent to Respondent via certified mail on September 17, 2018.

NMSA 1978 § 61-17A-15. Licensure of all establishment and enterprises

The board shall provide for the licensure of all establishments and enterprises. The board shall issue a license to establishments, enterprises and clinics that submit a completed application, accompanied by the required fees and documentation, and that ***submit satisfactory evidence of compliance with all requirements established by the board***. (emphasis added).

NMSA 1978, § 61-17A-5 (B):

Unless licensed pursuant to the Barbers and Cosmetologists Act, no person shall operate a school or establishment for compensation.

- Respondent did not have a license to operate a salon or electrology clinic.

NMSA 1978, §61-17A-2 and 16.34.1.7(A) NMAC:

Establishment – means an immobile beauty shop, barbershop, barbershop, electrology clinic, salon or similar place of business in which cosmetology, barbering, eyebrow threading, hairstyling or electrolysis is performed.

Cosmetology – means arranging, dressing, curling, waving, cleansing, cutting, bleaching, coloring, straightening or similar work upon the hair of a person, whether by hand or through the use of chemistry or mechanical or electrical apparatus or appliances, using cosmetic preparations, antiseptics, tonics, lotions or creams or massaging, cleansing, stimulating, manipulating, beautifying or performing similar work on the body of a person, manicuring and pedicuring the nails of a person, caring for and servicing wigs and hair pieces or removing of unwanted hair except by means of electrology. A cosmetologist shall not perform any type of shaving sing straight edge (or razor blade in any form) with or without a safety guard without obtaining appropriate licensure.

Electrologist – means a person who for compensation removes hair from or destroys hair on the human body through the uses of an electric current applied to the body with needle-shaped electrode or probe.

Esthetician – means a person who for compensation uses cosmetic preparation, including makeup applications, antiseptics, powders, oils, clays or creams or massaging, cleansing, stimulating or manipulating the skin for the purpose of preserving the health and beauty of the skin and body or performing similar work on any part of the body of a person; using the term of "medical esthetician" is not allowable under the act; this term is misleading and could be deemed deceptive or fraudulent.

- The services Respondent was providing were beyond the scope of services as defined, based upon her advertisements; the tools, implements and equipment; and her own admission.

16.34.7.9(A) NMAC:

Infection control and safety standards for establishments and enterprises…

(5) all establishments shall be completely separated by solid partitions, or by walls where food is prepared should be enclosed away from public areas.

- The kitchen area where food is stored and prepared was not completely separated. The area was being used for storage of various chemicals, products and implements, and was also being used to process the blood for the "Vampire Facials".

(17) it is the responsibility of all licensees, including the salon owner and designated licensed salon manager to ensure that all infection control requirements are followed.

- Respondent did not ensure all infection control requirements were followed because there were several violations of sanitation and safety standards.

(21) implementation of proper disinfection practices of working tools and implements; all non-porous (multi-use) items must be cleaned and then disinfected per procedure listed in Subsection B of 16.34.7.9 NMAC.

- The examination tables/beds, foot tubs, equipment, instruments and implements were not disinfected with EPA-registered bacterial, fungicidal and virucidal disinfectants. Rather, household cleaners were used.

(22) sharps ready for disposal shall 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 covered receptacle and disposed of through normal, approved disposal methods. Storage of filled contaminated waste containers on-site shall not exceed 90 days; containers shall be stored as far away as possible from autoclave/clean instruments. Establishment shall maintain records of waste removal.

- Although the establishment had properly labeled sharps containers, used needles were being disposed of in the trash can and there were no records of waste removal. Needles and syringes were laying around in different rooms on counters and not secure. Also, Respondent told the team from the Department of Health that any leftover blood from the clients were poured down the drain.

(25) there shall be adequate disinfectants in your place of business to perform scheduled services for two days of business.

- The establishment had several household disinfectant sprays and wipes; however, they were not EPA-registered bacterial, fungicidal and virucidal disinfectants.

(30) disinfectant implements must be stored in a disinfected, dry covered container and be isolated from contaminants. At no time can these items come into contact with used/dirty items.

- There were no tools or implements stored in disinfected, dry covered containers, nor were clean and dirty implements stored separately. There was no way of knowing what was disinfected, and what was not.

(31) all multi-use implements must be kept in covered, marked, separate containers (dirty or disinfected).

- There were no tools or implements stored in covered, marked containers. There was no way of knowing what was disinfected, and what was not.

(32) maintain disinfected combs, brushes and implements in enclosed containers marked as "ready use".

- Combs, brushes and implements were not in enclosed containers marked as "ready to use". There was no way of knowing what was disinfected, and what was not.

(33) maintain dirty or used combs, brushes and implements in enclosed containers marked "not ready for use".

- Combs, brushes and implements were not in enclosed containers marked as "ready to use". There was no way of knowing what was disinfected, and what was not.

(35) filters and drains of pedicure basins must be cleaned and disinfected after each use with an EPA hospital grade disinfectant.

- The foot tubs did not appear too clean. They were cleaned with household disinfectants.
- The foot tubs were for household use, and were not commercial grade.

16.34.7.9(B)(1) NMAC:

Cleaning and disinfection:

(1) all single-use instruments, items, tools or supplies that come in contact with the public and are porous (made of anything other than plastic, metal or glass) cannot be disinfected (including, but not limited to: eyebrow thread, disposable razors, pedi-pads, emery boards, sponges, cotton pads, buffing blocks, toe separators, chamois, sandpaper drill bits, waxing strip, wood sticks, cotton balls, nail wipes, disposable towels, pumice stones, flip flops, toe separators, porous files and porous buffers, etc.) shall be disposed of immediately after use.

- Nail files and buffers appeared to be worn and/or used. They should have been disposed of after being used on a client.

16.34.7.9(B)(2) through (14) NMAC:

Cleaning and disinfection:

(2) prior to use on any client, all multi-use (non-porous) instruments, items, equipment, implements or tools must be cleaned and disinfected. Items must be cleaned with soap and warm water or a chemical cleaner. The items must then be disinfected by a complete immersion in an EPA-registered, bactericidal, fungicidal and virucidal (formulated for hospitals) disinfectant that is mixed and used according to the manufacturer's directions. Non-porous items are the only items that can be disinfected;

(3) before disinfecting any surface or item, any visible debris and disposable parts must be removed. After cleaning, all surfaces of non-porous, multi-use tool or implement, including handles, must be disinfected by fully submerging the item in disinfectant in a covered container for the full amount of contact time listed on the manufacturer's label;

(4) implements and surfaces shall first be thoroughly cleaned of all visible debris prior to disinfection. EPA-registered bactericidal, fungicidal and virucidal disinfectants become inactivated and ineffective when visibly contaminated with debris, hair, dirt and particulates;

(5) EPA-registered bactericidal, fungicidal and virucidal disinfectants shall be used as follows:

(a) some disinfectants may be sprayed on the instruments, tools, or equipment to be disinfected;

(b) disinfectants in which implements are to be immersed shall be prepared fresh daily or more often if solution becomes diluted or soiled; and

(c) these chemicals are harsh and may affect the long term use of scissors and other sharp objects. Leaving items in solution in accordance with manufacturers' recommendation for effective disinfection is recommended.

(6) head rests, hand rests, pedicure basins, foot rests, manicure tables and other fixtures that come in contact with licensees and the public shall be cleaned and disinfected prior to use for each client;

(7) cups, bowls, basins, and jars must be cleaned and disinfected prior to use on each client;

(8) after each client, the implements shall be wiped with a clean paper or fabric towel and sprayed with either an EPA-registered bactericidal, fungicidal and virucidal disinfectant. Equipment, implements, tools, and materials to be cleaned and disinfected include, but are not limited to: combs and picks, haircutting shears, thinning shears/texturizers, edgers, guards, perm rods;

(9) items MUST stay immersed or visibly moist with disinfectant for the entire contact time listed on the manufacturer's label to be effective;

(10) whether or not disposable, the following must be replaced with clean or new (including, but not limited to) towels, hair caps, headbands, brushes, gowns, makeup brushes, spatulas);

(11) items that may not be immersed can be sprayed or wiped with disinfectant sprays and wipes that are bactericidal, fungicidal and virucidal (EPA-registered disinfectants) and must remain visibly moist for contact time indicate on the product label:

(a) metal guards, clipper blades, drill bits, high frequency watts, and other removable parts must be removed. All product residue, hair skin debris, nail dust, other visible debris must be brushed or wiped off, and the removable part must be disinfected with an EPA-registered, hospital level disinfectant spray or wiped after each use. The surfaces must

remain wet with the spray or wipe disinfectant for the contact time listed on the disinfectant label; and

(b) electric clippers, nail drills, flat irons, blow dryers, glass or metal electrodes, esthetic machines, steamers, or other electric or electronic tools must be cleaned and disinfected after each use, including the body and handle.

(12) clipper wash designed as cleaner, not as disinfectant, unless specified as disinfectant on label;

(13) all disinfectant solution must be changed per the manufacturer's label or sooner if contaminated;

(14) all products must be wiped cleaned and the exterior disinfected with a disinfectant wipe at the end of the day;

- Many multi-use (non-porous) instruments, implements, equipment and tools were not properly labeled or stored, making it impossible to determine that they had been properly disinfected.
- The procedures rooms all had equipment, machinery, instruments, and implements that appeared to be wiped/cleaned with household disinfectant wipes and/or sprays.

16.34.7.9 (4)(i) NMAC:

Prohibitions:

(i) alcohol cannot be served at any establishment without proper license.

- Two bottles of wine and a bottle of brandy were found in the establishment.

16.34.7.9 (4)(j) NMAC

Prohibitions:

(j) procedures performed by any means, by hand, chemical, mechanical, or electrical apparatus or appliance which comes into contact with or penetrates into the dermal layer of the skin is considered invasive.

- Some of the procedures performed are invasive and penetrate beyond the dermal layer of the skin.

5. The foregoing statements are general in nature and the evidence adduced at the hearing will not be limited by this summary.

6. The evidence before the Board is sufficient to justify the Board in denying Respondent's application for an Establishment and Enterprises license, imposing applicable fines or penalties, or taking other disciplinary action as permitted under the Barbers and Cosmetologists Act.

7. **The Board shall take the contemplated action by default, unless Respondent within twenty (20) days after service of the notice deposits in the mail a certified return receipt requested letter addressed to the Board and containing a request for a hearing.** *See* NMSA § 61-1-4(D)(3). If Respondent "does not mail a request for a hearing within the time and in the manner required by this section, the Board may take the action contemplated in the notice and such action shall be final and not subject to judicial review." *See* NMSA § 61-1-4(E). A written request for a hearing should be sent to the following address:

New Mexico Board of Barbers and Cosmetologists
Attention: Elisa Salazar, Compliance Liaison
New Mexico Regulation & Licensing Department
P.O. Box 25101
Santa Fe, NM 87504

8. If requested, the formal hearing will be conducted in accordance with the ULA, NMSA 1978, § 61-1-4(D)(4). Respondent is advised that NMSA 1978, § 61-1-8 affords the following rights:

> A. A person entitled to be heard under the Uniform Licensing Act [61-1-1 NMSA 1978] 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 therefore to the board or the hearing officer. The issuance of such subpoenas after the commencement of the hearing rests in the discretion of the board or hearing officer. All notices issued pursuant to NMSA 1978, § 61-1-4 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 days after the mailing or delivery of the request. No such request shall be made less than fifteen 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.

STATE OF NEW MEXICO BOARD OF BARBERS AND COSMETOLOGISTS

Date: September 18, 2018

By: _____

Chairperson
New Mexico Board of Barbers and Cosmetologists

Prepared by: Mark Swanson
Assistant Attorney General
Administrative Prosecutor
New Mexico Attorney General's Office
P.O. Drawer 1508
Santa Fe, NM 87504-1508
Telephone: (505) 490-4885
Email: mswanson@nmag.gov

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice of Contemplated Action was mailed to Respondent by U.S. Postal Service Certified Mail, Return Receipt Requested, to Respondent at, on this 18th day of September, 2018.

Certified Mail No. 9171 9690 0935 0155 2563 80
Return Receipt Requested

Vanessa Maula
New Mexico Board of Barbers and Cosmetologists