



**STATE OF RHODE ISLAND
RHODE ISLAND DEPARTMENT OF HEALTH**

**IN THE MATTER OF:
A&D Fitness
Violations of Executive Orders and
RI Department of Health Regulations**

IMMEDIATE COMPLIANCE ORDER

Now comes the Director of the Rhode Island Department of Health (“RIDOH”), as informed by the Chair (“Chair”) of the Rhode Island COVID-19 Enforcement Task Force (“Task Force”), and pursuant to R.I. Gen. Laws §23-1-21, Executive Orders 20-32 and 20-90 (“Executive Orders”), and the RIDOH rules and regulations pertaining to Safe Activities By Covered Entities During the COVID-19 Emergency (216-RICR-50-15-7) (“Safe Regulations”), determines that A&D Fitness (“Respondent”) is in violation of applicable Executive Orders and/or the Safe Regulations, which violations require immediate action to protect the health, welfare, and safety of the public.

NEED FOR IMMEDIATE ACTION

On March 9, 2020, Governor Gina M. Raimondo declared a state of emergency for the State of Rhode Island due to the dangers to health and life posed by COVID-19. The Safe Regulations were promulgated as an emergency rule, pursuant to R.I. Gen. Laws § 42-35-2.10, based on a finding that an imminent peril to the public health, safety, or welfare required immediate promulgation of the rule, specifically that “[i]n order to prevent further spread of COVID-19 as individuals begin to leave their homes more frequently and establishments begin to reopen, protective measures must be followed and

implemented for individuals and establishments to resume operations so that the public's health and welfare is protected.”

GROUNDS FOR DETERMINATION OF VIOLATION

- I. Respondent is a fitness establishment located at 1145 Atwood Avenue in Johnston.
- II. Respondent is a covered entity as defined in the Safe Regulations. As such, the Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- III. On or about October 15, 2020, a Task Force inspector met with owner Alicia Freeman (“Owner”) and conducted a Healthy Environment inspection of the Respondent. The inspector performed a checklist inspection based on the Safe Regulations and determined that Respondent scored a 4/12 for overall requirements and a 2/5 for fitness requirements. The inspector noted in her report that the Owner is not enforcing physical distancing and mask wearing regulations. In addition, the Owner’s husband expressed his frustration with the regulations, which require that a mask be worn while working out.
- IV. After the inspection, the inspector provided information and resources to the Respondent to help it achieve compliance. This included a recommendation to the Respondent on how to access www.ReopeningRI.com and the relevant websites for the Executive Orders, rules, regulations, and guidance. The Respondent was also advised that an inspector would conduct a reinspection in the near future.
- V. On or about October 16, November 4, and November 5, 2020, the Task Force received complaints against the Respondent regarding staff and participants not wearing cloth face coverings while working out.¹ One such complaint included several photographs depicting an exercise class where staff and customers are not wearing cloth face coverings and physical distancing is not being enforced. (See “Exhibit A”)

¹ Additional complaints pertaining to mask usage were also received on November 10 and 11, 2020.

- VI. As a result of these complaints, on or about November 6, 2020, a Task Force inspector visited the Respondent establishment to investigate the complaints and conduct a Healthy Environment inspection. Upon arrival, the inspector observed that there was a fitness class underway, but because of the overcrowding and lack of mask wearing, she felt unsafe to enter. No inspection was conducted.
- VII. On or about November 7, 2020, a different Task Force inspector visited the Respondent establishment and met with the Owner. The inspector observed that the facility was overcrowded, the usage of cloth face coverings was minimal, and that physical distancing was not being enforced. The inspector also reported that the Owner and several patrons were aggressive toward her. As a result of this interaction, no inspection took place.
- VIII. On or about November 8, 2020, a Task Force inspector visited the Respondent establishment and met with the Owner. The inspector observed that there was a fitness class underway with minimal mask usage being implemented. The owner was once again uncooperative with the inspector and threatened to call the police. Further, she stated that she is tired of being inspected and believes that she is doing everything properly. Because of the manner in which the Owner interacted with the inspector, a full inspection did not take place. The inspector, however, was able to observe numerous violations, described below.
- IX. Therefore, as a result of the Respondent's failure to comply with applicable Executive Orders and the Safe Regulations, and in the absence of any other information to rebut the allegations above, RIDOH has drawn the conclusion that the above allegations are true, and the Respondent is not in compliance with applicable Executive Orders and/or the Safe Regulations.

VIOLATIONS

The following alleged violations stem from the November 8, 2020 reinspection.

- I. Respondent is in violation of Section 7.4.1(A)(3) of the Safe Regulations, which requires all individuals in an establishment to wear cloth face coverings unless an exception applies and requires establishments to deny entry to any employee who is not otherwise exempt from the requirement or who refuses to wear a cloth face covering when required. The inspector observed three (3) employees present, none of which was wearing a cloth face covering. The inspector also observed approximately twenty (20) participants in a fitness class, none of which was wearing a cloth face covering. None of the employees or participants claimed an exception.
- II. Respondent is in violation of Section 7.4.1(A)(1) of the Safe Regulations, which requires each covered entity to develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment. Respondent did not cooperate with the inspection; a written plan was neither produced nor reviewed.
- III. Respondent is in violation of Section 7.4.1(A)(1)(a) of the Safe Regulations, which requires establishments to ensure compliance with a plan that includes procedures relative to, among other things, physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible. As stated above, no written plan was produced, and the inspector observed that physical distancing was not being maintained and that there were no measures in place to ensure that physical distancing was maintained.
- IV. Respondent is in violation of Section 7.4.1(A)(4) of the Safe Regulations, which requires each covered entity to ensure the placement of posters or signs at entry to its establishments educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH. The inspector observed that none of the required information was posted at the entry to the establishment and concluded, therefore, that the Respondent failed to ensure the placement of required posters.

- V. Respondent is in violation of Sections 7.4.1(A)(6) & (7) of the Safe Regulations, which require each covered entity to ensure the performance of environmental cleaning of its establishments once per day and to maintain records documenting such environmental cleaning. Respondent did not cooperate with the inspection; the records were neither produced nor reviewed.
- VI. Respondent is in violation of Section 7.4.1(A)(2) of the Safe Regulations, which requires each covered entity to implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason. Respondent did not cooperate with the inspection; it is unknown whether Respondent conducts screening activities in accordance with the regulation, but the inspector observed that there were no posters visible at or near the entrance concerning entry screening.
- VII. Respondent is in violation of Section 7.4.1(A)(8) of the Safe Regulations, which requires all covered entities to maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days. Respondent did not cooperate with the inspection; the logs were neither produced nor reviewed.
- VIII. Respondent is in violation of Section 7.4.5(A)(1) of the Safe Regulations, which requires that all individuals in a fitness center or gym must wear a cloth face covering at all times while in the establishment. Within the establishment, the inspector observed that there were approximately three (3) employees and twenty (20) participants engaged in fitness activities who were not wearing cloth face coverings. (See "Exhibit B")
- IX. Respondent is in violation of Section 7.4.5(A)(2) of the Safe Regulations, which requires that all exercise equipment, including cardio equipment, must be separated by at least six (6) feet. The inspector observed that the participants of the fitness class were exercising on mats that were not spaced at least six feet apart.

- X. Respondent is in violation of Section 7.4.5(A)(6) of the Safe Regulations, which requires that information is collected from all visitors and other entrants who have interacted with others present on the site for a period of 15 minutes or more for the purposes of contact tracing. Respondent did not cooperate with the inspection; the records were neither produced nor reviewed.

ORDER

It is hereby **ORDERED**, that Respondent is to immediately close. Prior to reopening, violations shall be remedied to the satisfaction of the Director of RIDOH by fulfilling the conditions as set forth below:

- I. Respondent must develop and incorporate into its written control plan a strategy to prevent the violations listed above from reoccurring. Said written plan shall incorporate, but not be limited to, the following:
 - a. Respondent shall require all employees in its establishment to wear cloth face coverings unless an exception applies. In accordance with Section 7.4.1(3)(a) of the Safe Regulations, Respondent shall deny access to its establishment to any employee who refuses to wear a cloth face covering when required by the Safe Regulations unless an exception applies.
 - b. Respondent shall instruct all individuals in its establishment to wear cloth face coverings unless an exception applies.
 - c. Respondent shall develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment.
 - d. Respondent shall ensure compliance with its plan for safe operation, required pursuant to Section 7.4.1(A)(1) of the Safe Regulations, including compliance with, among other things, procedures consistent with the Safe Regulations relative to physical distancing at all times, to the extent feasible, and additional measures to be taken in high traffic, communal, or other areas where physical distancing is not feasible.

- e. Respondent shall ensure the placement of posters or signs at entry to its establishment educating any individual at the establishment concerning entry screening, required physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.
- f. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and maintain records documenting such environmental cleaning.
- g. Respondent shall clean all high touch surfaces in accordance with CDC guidelines, in accordance with its specific industry, and maintain records documenting such cleaning.
- h. Respondent shall implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason.
- i. Respondent shall maintain an employee work log that identifies the full name, phone number, and the date and time of all shifts worked by each employee. This work log must be maintained for at least thirty (30) days.
- j. Respondent shall ensure that all individuals in its establishment wear a cloth face covering unless an exception applies.
- k. Respondent shall ensure that all exercise equipment, including cardio equipment, is separated by at least six (6) feet.
- l. Respondent shall ensure that all equipment is thoroughly sanitized between uses.
- m. Respondent shall ensure that there is adequate time between classes or sessions to thoroughly clean the equipment and exercise space. If surfaces, equipment, or objects cannot be sanitized between uses, then the applicable fitness activity is prohibited.
- n. Respondent shall collect information from all visitors and other entrants who have interacted with others present on the site for a period of 15 minutes or more for the purposes of contact tracing. The information collected must be maintained for thirty (30) days.

- II. In addition to the conditions as set forth above, Respondent may not reopen until such time that the following conditions are met, to the satisfaction of the Director of RIDOH:
- a. Email the following documents to: DBR.CovidTaskForce@dbr.ri.gov
 - i. An updated control plan which, in addition to addressing the matter set forth above in this ICO, must detail a strategy to ensure your employees and patrons are adhering to other applicable RIDOH regulations found here: <https://rules.sos.ri.gov/regulations/part/216-50-15-7>
 - ii. Your establishment's employee work log, dating back two weeks from the date the violations outlined in the ICO were witnessed by a Task Force inspector.
 - b. Ensure all persons on the work log are tested for COVID-19.
 - c. Once all employees have been tested AND their results are available, send confirmation of such to: DBR.CovidTaskForce@dbr.ri.gov
 - d. Respondent shall attend and participate in a meeting with the Rhode Island Department of Health to discuss health concerns. You will be emailed the contact information of the RI Department of Health (RIDOH) so you can schedule your meeting with RIDOH.
 - e. After you have met with RIDOH, please contact: DBR.CovidTaskForce@dbr.ri.gov to schedule an inspection of your establishment.
 - f. Respondent is completely cleaned and sanitized in accordance with applicable CDC guidance.
 - g. All employees are trained on, and comply with, Respondent's updated written control plan.
 - h. Respondent shall ensure that information be collected from all visitors and other entrants who have interacted with others present on site solely for the purposes of contact tracing.

Said information must be maintained for a period of thirty (30) days and made available to the Department of Health upon request.

Entered this 12th Day of November 2020.

A handwritten signature in black ink, appearing to read "Nicole Alexander-Scott". The signature is written in a cursive style with a large, looping initial "N".

Nicole Alexander-Scott, MD, MPH
Director
Rhode Island Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
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EXHIBIT A

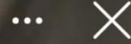


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EXHIBIT B



EXHIBIT C

