



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

**IN THE MATTER OF:
Danny's Bar
Violations of Executive Orders and
RI Department of Health Regulations**

**IMMEDIATE COMPLIANCE ORDER AND
NOTICE OF VIOLATION AND 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 §§ 23-1-20 and 23-1-21, Executive Orders 20-32 and 20-67 ("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 there are reasonable grounds to believe that Danny's Bar ("Respondent") is in violation of applicable Executive Orders and/or the Safe Regulations, and that, with respect to bar requirements, Respondent is in violation of applicable Executive Orders and/or the Safe Regulations, which violation requires 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 VIOLATIONS

- I. Respondent is a dining establishment which maintains a bar area located at 23 Railroad Avenue in Westerly.
- II. Respondent is a covered entity, as defined in the Safe Regulations. As such, Respondent is required to comply with applicable Executive Orders and the Safe Regulations.
- III. On or about August 26, 2020, a Task Force inspector met with employee Ed (“Employee”) 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 5/11 for overall requirements and a 4/5 for dining requirements. The employee stated that he was familiar with the COVID-19 requirements from his work at a different establishment, however, with regard to Respondent, he just worked there.
- IV. In response, the inspector provided information and resources to the Respondent to help it achieve full 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.
- V. On or about August 29, 2020, the same Task Force inspector conducted a spot check of the Respondent for compliance with the Safe Regulations. The inspector observed that the Respondent had made no attempts to correct the deficiencies which were noted and discussed with the Respondent on the inspection of August 26, 2020.

- VI. Although the Respondent stated that the bar area was being used for service only, on August 26, the inspector observed patrons walking up to the bar and being served drinks. The inspector also observed that a non-compliant barrier was in place. Thus, the Respondent failed to ensure that no staff were permitted to work in any areas behind the bar unless a physical, non-porous barrier of appropriate height is installed between the bar work areas and customers; that even with physical barriers between the bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size; and/or that working bar areas, such as drink making stations or glassware storage, must be located at least six feet from the gaps.
- VII. Based on the foregoing, and in the absence of any other information to rebut the allegations, the Director of RIDOH has determined that Respondent is in present violation of multiple provisions of applicable Executive Orders and/or the Safe Regulations and that, with respect to the bar requirements, immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the August 26, 2020 inspection and the August 29, 2020 spot check:

- 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 physical distancing or 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. On August 26, the inspector observed two (2) employees in the bar, neither of which were wearing cloth face coverings. Both employees were standing together talking. When the inspector introduced himself to these employees, one left the area and the other had to go and find a mask to wear.

- II. Respondent is in violation of Section 7.4.1(A)(1)(f) of the Safe Regulations, which requires the designation of a point of contact who is familiar with the applicable Executive Orders and the Safe Regulations, and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up. Upon request, Respondent did not identify a point of contact who is familiar with the guidance and regulations.
- III. 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. Upon request, Respondent admitted that they did not have a written plan.
- IV. 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. Upon request, Respondent admitted that it did non maintain an employee work log.
- V. Respondent is in violation of Section 7.4.1(A)(6) & (7) of the Safe Regulations, which requires each covered entity to ensure the performance of environmental cleaning of their establishments once per day and to maintain records documenting such environmental cleaning. Upon request, the Respondent admitted that it did not maintain the required records.
- 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. Upon inquiry, the Respondent admitted that it did not conduct entry screening. In addition, there were no posters visible at or near the entrance concerning entry screening.

VII. 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 required posters were absent from the entry to the establishment and concluded, therefore, that the Respondent failed to ensure the placement of required posters.

VIII. Respondent is in violation of Section 7.4.2(A)(6) of the Safe Regulations, which requires that:

- a. when parties are seated at the bar, no staff are permitted to work in any areas behind the bar and all work areas behind the bar unless a physical, non-porous barrier of appropriate height and made of a material which complies with the interior finish requirements of the State Fire Code, is installed between the bar work areas and customers; and
- b. even with physical barriers between bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size; and,
- c. working bar areas (e.g. drink making stations or glassware storage) must be located at least six (6) feet from these gaps. Drinks and/or food may not be passed to customers under, over, or around such barrier by staff behind the bar.

On August 26, the inspector observed that although a physical barrier was present between work areas and customers, the barrier was not compliant with the Safe Regulations because the barrier was made of plastic sheeting which was non-continuous, had gaps of more than eight (8) inches, and work stations were located within six (6) feet of these gaps. The inspector advised the employee that the barrier needed to come down due to safety concerns. The inspector also noted that although there were no patrons sitting at the bar, the bartender was serving standing

customers. On August 29, the inspector observed that the same non-compliant barrier remained in place.

- IX. Respondent is in violation of Section 7.4.2(A)(3) of the Safe Regulations, which prohibits service to standing customers. As stated above, on August 26, the inspector observed standing customers being served at the bar.

ORDER

IMMEDIATE COMPLIANCE

It is hereby **ORDERED**, that Respondent is to immediately close its bar/bar area until such time as violations are remedied to the satisfaction of the Director of RIDOH by fulfilling the conditions as set forth below:

- I. Respondent shall ensure that:
 - a. when parties are seated at the bar, no staff are permitted to work in any areas behind the bar and all work areas behind the bar unless a physical, non-porous barrier (i.e., plexiglass) of appropriate height and made of a material which complies with the interior finish requirements of the State Fire Code is installed between the bar work areas and customers; and
 - b. even with physical barriers between bar work areas and customers, staff may only serve seated customers drinks and food through a gap or opening in the barrier that is no more than eight (8) inches in size; and
 - c. working bar areas (e.g. drink making stations or glassware storage) are located at least six (6) feet from these gaps and that drinks and/or food is not passed to customers under, over, or around such barrier by staff behind the bar.

NOTICE OF COMPLIANCE

It is further **ORDERED**, that on or before the tenth (10th) day from service of this Notice of Violation and Compliance Order, Respondent shall remedy the above cited violations and come into full compliance with applicable Executive Orders and Regulations, by fulfilling the conditions as set forth below:

- I. Respondent shall require all employees in its establishment to wear cloth face coverings unless physical distancing can be continuously maintained, or 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.
- II. Respondent shall designate a point of contact who is familiar with applicable Executive Orders and the Safe Regulations, and who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up.
- III. Respondent shall develop, maintain, and ensure compliance with a written plan for the safe operation of the establishment.
- IV. 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.
- V. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and maintain records documenting such environmental cleaning.
- VI. Respondent shall implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason.
- VII. 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.

VIII. Respondent shall ensure that service is made only to seated customers and that no service to standing customers occurs.

With respect to the Notice of Compliance, a written request for a hearing may be filed within ten (10) days of this notice.

Failure to comply with this ORDER may result in the imposition of civil penalties and/or any other action authorized by applicable law or regulation.

Entered this 1st day of September 2020.

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

Nicole Alexander-Scott, MD, MPH
Director
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