



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

**IN THE MATTER OF:
Medical Office of Daniel Hochberger, MD
Violations of Executive Orders and
RI Department of Health Regulations**

**IMMEDIATE COMPLIANCE ORDER
HEALTHY ENVIRONMENT**

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 20-50 (“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 the Medical Office of Daniel Hochberger, MD (“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."

GROUND FOR DETERMINATION VIOLATIONS

- I. Respondent is a medical practice located at 400 Pawtucket Avenue in Rumford.
- 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 July 13, 2020, a Task Force inspector met with Respondent's office manager, Nancy Covell ("Manager"), and conducted a Healthy Environment inspection of Respondent based on the Safe Regulations. Pursuant to the inspection, Manager informed the inspector that, as understood by Respondent, Respondent is not obligated to comply with any instructions relative to "re-opening" because Respondent never closed during the present pandemic. Pursuant to the inspection, it was apparent to the inspector that Manager was unaware of the Safe Regulations and other rules, regulations, and guidance relative to the re-opening of Rhode Island, and unaware of Respondent's obligations thereunder, which Manager acknowledged to inspector.
- IV. The inspector determined that Respondent was not in compliance with applicable Executive Orders and/or the Safe Regulations. Accordingly, the inspector educated Respondent on how to remedy the violations, which instruction included assisting Manager with navigating the relevant websites for the Executive Orders, rules, regulations, and guidance, as well as required signage.
- V. 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 immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the July 13, 2020 inspection:

- I. Respondent is in violation of Section 7.3(B) of the Safe Regulations, which requires all individuals in public or in an establishment to wear a cloth face covering unless physical distancing can be maintained easily and continuously, or an exemption applies, and Section 7.4.1(A)(3), which requires each covered entity to instruct any person entering an establishment to wear cloth face coverings except when physical distancing from others in the establishment is easily, continuously, and measurably maintained or an exception applies, and to deny access to any employee who refuses to wear a cloth face covering when required. The inspector observed three employees inside the establishment during the inspection. Two of the three employees were not wearing cloth face coverings when the inspector arrived,¹ despite the fact that physical distancing was observed by the inspector to be impossible for any of the three employees to maintain. The third employee was wearing a cloth face covering, but improperly so, as it did not cover her nose. None of the employees claimed to be exempt from having to wear a cloth face covering.
- II. Respondent is in violation of Section 7.4.1(A)(1), which requires every covered entity to develop and maintain a written plan for the safe operation of its establishment with regard to COVID-19 during the state of emergency (“Plan”) and to make this plan available to RIDOH upon request. Pursuant to Section 7.4.1(A)(1)(f), the plan must address, among other things, coordinating with RIDOH regarding any potential hot spot investigation, including the designation of a point of contact who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow-up. As stated, above, it was apparent to the inspector that Manager was unaware of the Safe Regulations or Executive Orders, or other rules, regulations, and guidance relative to the re-opening of Rhode Island, and unaware of Respondent’s obligations thereunder, which Manager acknowledged to inspector. Manager admitted that Respondent did not have a Plan and that Respondent was unaware of its obligation to develop and maintain a

¹ The inspector did observe the two employees put on cloth face coverings after they noticed his arrival.

Plan. Though Manager identified herself as the point of contact, it was apparent to the inspector, based on Respondent's admitted lack of awareness of the Safe Regulations, that Manager had not been designated as the point of contact with respect to the Plan and was unaware of the associated responsibilities.

- III. Respondent is in violation of Sections 7.4.1(A)(6) and (7) of the Safe Regulations, which require each covered entity to ensure the performance of environmental cleaning of their establishments once per day, to clean commonly touched surfaces, such as shared workstations, elevator buttons, door handles, and railings in accordance with Centers for Disease Control ("CDC") guidance, and to maintain records documenting such environmental cleaning. Consistent with Manager's admitted lack of awareness relative to Respondent's obligations under the Safe Regulations, it was apparent to the inspector based on his observation that the establishment was not cleaned once per day, appearing not to have been cleaned in some time, and that commonly touched surfaces were not cleaned in accordance with CDC guidance. Among other things, the inspector observed stacked magazines in the waiting area and obstructions, including stacks approximately three feet high covering countertops, which effectively prevented cleaning in accordance with the Safe Regulations.
- IV. 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. As stated above, Manager admitted Respondent's lack of awareness relative to its responsibilities under the Safe Regulations. Manager admitted that Respondent has not implemented or ensured compliance with the screening requirements.
- V. 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 social

distancing, use of cloth face coverings, and other subjects as provided in guidance issued by the Department. The inspectors observed that required posters were absent from the entry to the establishment and concluded that, consistent with Respondent's lack of awareness relative to its obligations under the Safe Regulations, Respondent failed to ensure the placement of required posters.

- VI. Respondent is in violation of Section 7.3(A) of the Safe Regulations, which requires all individuals in public or in an establishment to maintain physical distancing at all times, to the extent feasible, and Section 7.4.1(A)(1)(a), which, by extension, requires covered entities to address physical distancing in their establishments. As stated above, the inspector observed the employees not wearing cloth face coverings despite being unable to maintain physical distancing. The inspector also observed that the waiting room remained set up to accommodate the maximum number of occupants, with seats set up side by side, there being no evidence of precautions taken to maintain physical distancing among patients in the waiting room.

ORDER

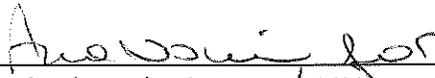
It is hereby **ORDERED**, that Respondent is immediately closed until such time as the following violations are remedied to the satisfaction of the Director of RIDOH:

- I. Respondent shall develop and implement a corrective plan that brings Respondent into compliance with applicable Executive Orders and the Safe Regulations.
- II. Respondent establishment shall be cleaned and sanitized in accordance with applicable CDC guidance.
- III. Each employee shall be interviewed by RIDOH to ensure that none has symptoms of COVID-19. In accordance with Section 7.4.1(A)(2), any employee exhibiting multiple symptoms of COVID-19 or who is COVID-19 positive shall be denied access to the establishment.

- IV. 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.
- V. In accordance with Section 7.4.1(A)(1) of the Safe Regulations, Respondent shall develop and maintain a plan for the safe operation of the establishment, which plan shall be made available to RIDOH upon request. Consistent with the required elements of the plan, Respondent shall address, among other things, physical distancing within the establishment and shall designate a point of contact, familiarized with the Executive Orders and Safe Regulations, who will work with RIDOH on testing, contact tracing, case investigation and quarantine follow-up.
- VI. Respondent shall ensure the performance of environmental cleaning of its establishment once per day and shall clean commonly touched surfaces, such as shared workstations, elevator buttons, door handles, and railings in accordance with CDC guidance. Respondent shall maintain records documenting such cleaning.
- VII. Respondent shall ensure that all entrants to its establishment at any time for any reason are screened in accordance with Section 7.4.1(A)(2) of the Safe Regulations.
- VIII. Respondent shall ensure the placement of posters or signs at entry to its establishment educating any individual at the establishment concerning entry screening, required social distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.
- IX. Respondent shall ensure that physical distancing measures are in place and is maintained at all times, to the extent feasible.

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 16th day of July 2020.

A handwritten signature in black ink, appearing to read "Nicole Alexander-Scott", written over a horizontal line.

Nicole Alexander-Scott, MD, MPH
Director
Rhode Island Department of Health
Cannon Building, Rm. 401
Three Capitol Hill
Providence, RI 02908