



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

**IN THE MATTER OF:
Merrill Lounge
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 20-58 (“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 Merrill Lounge (“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 located at 535 North Broadway in East Providence.
- 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 21, 2020, a Task Force inspector met with owner John Rodriguez (“Owner”) and conducted an inspection of the Respondent. The inspector performed a checklist inspection based on the Safe Regulations and determined that the Respondent scored a 4/11 for overall requirements and a 2/7 for bar requirements.
- IV. Of note is the fact that the Respondent failed to ensure that if parties were seated at the bar, 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.
- 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, 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 21, 2020 inspection:

- 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. The inspector observed three (3) employees in the establishment, two (2) of which were not wearing cloth face coverings. The inspector first observed the bartender to not be wearing a cloth face covering while waiting on patrons. When he observed the inspector, he donned a cloth face covering. The inspector also observed the owner to not be wearing a mask while not maintaining physical distancing. No medical exception was claimed by either.
- 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 the RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow up. Although the Owner was the designated point of contact, he displayed a lack a familiarity with applicable Executive Orders and the Safe Regulations when questioned by the inspector.
- 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 not maintain an employee work log.

- V. 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. Upon request, the Respondent was unable to produce any records documenting such cleaning.
- VI. 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 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.
- VII. Respondent is in violation of Section 7.4.2(A)(5) of the Safe Regulations, which requires that all parties seated at a bar be separated by at least 6 feet, unless separated by a physical, non-porous barrier of an appropriate height. The inspector observed multiple parties sitting at the bar within six (6) feet of each other and without being separated by a physical, non-porous barrier of appropriate height. (See “Exhibit A”)
- 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 (i.e., plexiglass) of appropriate height 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. (See “Exhibit B”)

The inspector observed that the Respondent had made attempts to install physical barriers between bar work areas and customers, however, the manner in which the barrier was erected does not comply with the Safe Regulations. For example, the barrier is not continuous and does not extend to all areas of the bar where patrons sit. The inspector also observed that the working areas were not located at least six (6) feet from the barrier and that the gaps/openings were greater than eight (8) inches in size.

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 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:

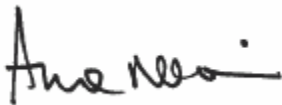
- I. Respondent shall require all employees in its establishment to wear cloth face coverings unless physical distancing can be continuously maintained, or an exception applies. In accordance with Section 7.4.1(3)(a) of the Safe Regulations, Respondent shall deny access to its establishment to any employee 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 clean all high touch surfaces in accordance with CDC guidelines, in accordance with its specific industry, and maintain records documenting such cleaning.

- VII. Respondent shall implement and ensure compliance with screening of all individuals entering its establishment(s) at any time for any reason.
- 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 physical distancing, use of cloth face coverings, and other subjects as provided in guidance issued by RIDOH.

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 25th day of August 2020.



Nicole Alexander-Scott, MD, MPH
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EXHIBIT A



EXHIBIT B

