



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

**IN THE MATTER OF:
Avenue Grill
2223 Mineral Spring Avenue
North Providence, RI 02911
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”), 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 Avenue Grill (“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 DETERMINING VIOLATIONS

- I. Respondent is a diner located at 2223 Mineral Spring Avenue, North 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 June 29, 2020, a RIDOH inspector conducted an inspection of Respondent in response to a complaint alleging noncompliance with the Safe Regulations, specifically, "Establishment not following any COVID-19 regulations. Staff were not wearing masks. No sanitizing of counters/high touch surfaces was observed[] Self seating was observed[] Staff heard saying they were purposefully not following COVID-19 regulations." The inspector determined that Respondent was not in compliance with applicable Executive Orders and/or the Safe Regulations.
- IV. Pursuant to the inspection, the inspector observed the following:
 - a. That no Respondent employees, including Respondent owner, Kevin Carbone ("Owner"), who generally cooks, his wife, who is a server, and all staff, including wait staff and cooks, were wearing cloth face coverings, even when within six (6) feet of others. Only the cooks donned cloth face coverings when the inspector saw them. When the inspector asked Owner why no employees were wearing cloth face coverings, Owner stated only that he and his wife were exempt and do not wear cloth face coverings, notwithstanding the fact that Owner's wife, as a server, has direct face-to-face contact with patrons. Owner admitted that neither he nor his wife, wear cloth face coverings while serving. The inspector observed Owner's wife, without a cloth face covering, seated in a booth, speaking with patrons. Owner suggested that another server was not wearing a cloth face covering because it was her first day;

- b. That tables at which parties were seated were neither separated by a physical, non-porous barrier nor separated by at least eight (8) feet from table edge to table edge or to allow six (6) feet spacing between seated customers at different tables. The inspector observed that patrons from apparently separate parties were seated in back-to-back booths;
 - c. That Respondent establishment lacked posters or signs at its entries 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;
 - d. That Respondent failed to implement and ensure compliance with screening of all individuals entering its establishment at any time for any reason. The investigator observed patrons entering Respondent establishment without any screening;
 - e. That Respondent establishment lacked a point of contact to work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow-up;
 - f. That Respondent had not performed a thorough cleaning prior to reopening; and
 - g. That Respondent lacked a plan for the safe operation of its establishment with regard to COVID-19 during the state of emergency.
- V. Pursuant to the inspection, the inspector spoke with Owner and his wife. In addition to Owner's comments, above, Owner advised the inspector of his belief that COVID-19 is a hoax and that "the people that have died were going to die anyway." The inspector provided Owner with RIDOH-approved signs for posting at the entrances to Respondent establishment, educated Owner on how to remedy the violations, and advised Owner that he would return to conduct a follow-up inspection of Respondent.
- VI. On July 7, 2020, the RIDOH inspector returned to Respondent establishment for a reinspection of Respondent relative to the Safe Regulations. Again, the inspector determined that Respondent was not in compliance with applicable Executive Orders and/or the Safe Regulations, having only

remedied the lack of required signs by posting those provided on June 29, 2020. Owner asked the inspector to leave Respondent establishment before the inspector could confirm that Respondent still lacked a plan for the safe operation of its establishment with regard to COVID-19 during the state of emergency.

VII. Pursuant to the inspection, the inspector observed the following:

- a. That no Respondent employees were wearing cloth face coverings, even when within six (6) feet of others. Again, only the cooks donned cloth face coverings when the inspector saw them;
- b. That tables at which parties were seated were neither separated by a physical, non-porous barrier nor separated by at least eight (8) feet from table edge to table edge or to allow six (6) feet spacing between seated customers at different tables. Again, the inspector observed that patrons from apparently separate parties were seated in back-to-back booths;
- c. That Respondent failed to implement and ensure compliance with screening of all individuals entering its establishment at any time for any reason. The investigator again observed patrons entering Respondent establishment without any screening;
- d. That Respondent establishment lacked a point of contact to work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow-up; and
- e. That Respondent had not performed a thorough cleaning prior to reopening.

VIII. Pursuant to the inspection, the inspector again spoke with the Owner, this time by telephone. Owner alternately claimed compliance with the Safe Regulations and argued that he is not obligated to comply because they are "just guidelines." Owner stated his resolve not to go out of business over the Safe Regulations. The inspector advised Owner that staff with face-to-face contact with patrons must wear cloth face coverings. Thereafter, the inspector was asked to leave and the conversation was concluded.

IX. 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 EO-50 and the Safe Regulations and that, based on Owner's actions and those of his wife, as well as their representations to the inspector, neither has any intent of remedying such violations. Accordingly, the Director of RIDOH has further determined that immediate action is necessary to protect the health, welfare, or safety of the public.

VIOLATIONS

The following violations stem from the July 7, 2020 inspection:

- I. Respondent is in violation of Section 7.4.1(A)(1) of the Safe Regulations, which requires that every covered entity 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 make this plan available to RIDOH upon request. Pursuant to the inspection, the inspector was not provided with Respondent's Plan.
- II. Respondent is in violation of Section 7.4.2(A)(1)(a) of the Safe Regulations, which requires tables be separated by a physical, non-porous barrier of an appropriate height, unless separated by at least eight (8) feet from table edge to table edge or to allow to allow six (6) feet spacing between seated customers at different tables and at least six (6) feet away from areas with regular customer foot traffic.
- III. Respondent is in violation of Section 7.4.1(A)(3) of the Safe Regulations, 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 requires that if any employee refuses to wear a cloth face covering when required, and such individual is not otherwise exempt, such employee is to be denied access to the establishment.

- IV. Respondent is in violation of Section 7.4.1(A)(1)(f) of the Safe Regulations, which require every covered entity to designate a point of contact who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow-up.
- V. Respondent is in violation of Section 7.4.1(A)(2), which requires each covered entity to implement and ensure compliance with screening of all individuals entering its establishment at any time for any reason.
- VI. Respondent is in violation of Section 7.4.1(A)(9), which requires all covered entities to perform a thorough cleaning of any establishments prior to reopening.

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 shall develop and maintain a Plan and submit such Plan for approval to the RIDOH.
- III. Respondent shall be cleaned and sanitized in accordance with applicable Centers for Disease Control (“CDC”) guidance.
- IV. Each employee shall be interviewed by RIDOH to ensure that none has symptoms of COVID-19. In accordance with § 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.
- V. Respondent shall ensure that all entrants to its establishment at any time for any reason are screened in accordance with § 7.4.1(A)(2) and that any individual identified as exhibiting multiple symptoms of COVID-19 or who is COVID-19 positive shall be denied access to the establishment.

- VI. 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 § 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.
- VII. Respondent shall ensure that physical distancing is maintained at all times, to the extent feasible.
- VIII. Respondent shall ensure that tables are separated by a physical, non-porous barrier of an appropriate height, unless separated by at least eight (8) feet from table edge to table edge or to allow to allow six (6) feet spacing between seated customers at different tables and at least six (6) feet away from areas with regular customer foot traffic.
- IX. Respondent shall designate a point of contact who will work with RIDOH on testing, contact tracing, case investigation, isolation and quarantine follow-up.

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.

[SIGNATURE PAGE FOLLOWS]

Entered this 8th day of July 2020.

Ana Novais for

Nicole Alexander-Scott, MD, MPH
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