



Department of Health

Three Capitol Hill
Providence, RI 02908-5097

TTY: 711
www.health.ri.gov

STATE OF RHODE ISLAND

The Rhode Island Department of Health
COVID-19 Operations and Enforcement
In the Matter of: Vibe Lounge and Hookah Bar
Citations Numbered 8000-0016 and 8000-0123

RIDOH'S WITHDRAWAL OF ACTION AGAINST VIBE LOUNGE & HOOKAH BAR

Now comes the Rhode Island Department of Health ("RIDOH") and hereby respectfully withdraws the Administrative Hearing Notice filed by RIDOH in the above-captioned action. RIDOH has concluded it will not pursue the civil penalties assessed by the Citations issued to Vibe Lounge & Hookah Bar ("Vibe Lounge" or "Respondent"). Accordingly, RIDOH is withdrawing the Administrative Hearing Notice with prejudice and will close its file.

WHEREFORE, RIDOH respectfully requests that the Administrative Hearing Officer approve this withdrawal and close the Administrative Action, with prejudice.

RHODE ISLAND DEPARTMENT OF HEALTH,

By and through its counsel,

/s/ Kathryn T. R. O'Brien

Kathryn T. R. O'Brien, #7778

Julia Wyman, #9017

Rhode Island Department of Health

3 Capitol Hill, Room 404

Providence, RI 02908

Kathryn.Obrien@ohhs.ri.gov



State of Rhode Island

STATE OF RHODE ISLAND

**IN THE MATTER OF: VIBE LOUNGE AND HOOKAH BAR
CITATIONS NUMBERED 8000-0016 AND 8000-0123**

VIBE LOUNGE AND HOOKAH BAR'S MOTION TO DISMISS

Respondent hereby files this motion to dismiss the above-encaptioned citations. As grounds for said motion to dismiss, the Respondent states the following:

During the covid-19 pandemic, the Governor of Rhode Island used her emergency powers enumerated under R.I.G.L § 30-15-9 to implement emergency rules and regulations for the public's benefit, safety, and welfare. Among those regulations were ones dealing with the opening and operation of restaurants and the requirement of social distancing and the like of the patrons. The Department of Health was empowered to write emergency rules and regulations regarding the restaurant health and safety of the patrons. The Department of Health receives its authority from R.I.G.L § 23-1-1 and § 23-1-17. The penalty for those sections can be found in R.I.G.L. § 23-1-25. No place in the enabling legislation for the Department of Health does it allow the Department to fine anyone or anything for any violation of any rule or regulation.

In fact, a violation must be proven by a criminal standard. In R.I.G.L § 23-1-17, the Department can only revoke, suspend or annul any license or permit that it issues. The emergency regulations promulgated by the Department of Health title 216-chapter 50 part 7 indicates that there will be an administrative penalty in addition to any criminal penalties provided for under applicable law. At no time during the pandemic did the general assembly give the Governor or the Department of health or its director greater power than what was prescribed in the enabling legislation.

R.I.G.L § 30-15-9 does not allow the Governor to increase rules and regulations only to decrease them. Furthermore, it is inconceivable that a civil penalty could be considered a product of an emergency regulation that directly affects the health and safety of the public. The Respondent does not deny that the Governor and the Department of Health had every right to issue immediate compliance orders because that would directly affect the welfare and safety of the public. However, a civil penalty is punitive, and it is not within the power granted to the Department of Health and/or the Governor. Therefore, both citations should be dismissed.

Vibe Lounge and Hookah Bar
Through its Attorney,

/s/ Peter J. Petrarca
Peter J. Petrarca, Esq. #6134
Petrarca & Petrarca Law Offices
330 Silver Spring Street
Providence, RI 02904
Tel: 401-273-1111
Fax: 401-621-2225