

**STATE OF NEW HAMPSHIRE
OFFICE OF PROFESSIONAL
LICENSURE AND CERTIFICATION**

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

**In Re:
Daisy Nails,
Shop License #3754**

**Chau N. Nguyen, Owner
Personal License #28206**

**Kristina Tran, Owner
(noticed as unlicensed)**

Docket No.: 22-BAR-014

**FINAL DECISION AND
ORDER– 01/17/23**

I. ATTENDEES:

Jeanne Chappell, Board Member and Chair
Sarah Partridge, Board Member
Donna Woodsom, Board Member
Ann Dalton, Board Member
Joshua Craggy, Board Member
Talia Wilson, Board Administrator
Tracey Pappas, Board Administrator
Lauren Warner, Esq., Board Counsel
Nikolas K. Frye, Esq. Presiding Officer
Collin Phillips, Esq., Hearing Counsel
Chau N. Nguyen, Licensee Shop Owner and Personal License
Kristina Tran, Licensee Shop Owner
Thuy Truong-Brenot, Translator
Sandra Hodgdon, Investigator for OPLC and Witness

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 04/25/22, the New Hampshire Office of Professional Licensure and Certification (“OPLC”), acting on behalf of the New Hampshire Board of Barbering, Cosmetology, and Esthetics (“Board”), conducted a follow-up inspection of Daisy Nails, owned by Chau N. Nguyen and Kristina Tran (collectively and separately hereinafter referred to as “Licensee”) and assessed 1,787 violation points for

multiple hygiene, safety, and license related violations found on the premises. After further investigation by OPLC, the Board voted to commence this adjudicative proceeding on 07/18/22. The matter was continued in October of 2022 to obtain a translator for the Licensee. After providing the Licensee with notice and retaining a translator, the adjudicatory hearing was held 01/17/23. This Final Order follows.

III. SUMMARY OF THE EVIDENCE:

The Board received the following evidence pursuant to RSA 541-A:33 and Rule 213.03:

a. Exhibits were submitted by Hearing Counsel, numbered as follows:

1. Confidential Memorandum – OPLC Enforcement
2. Shop Application Packet
3. Shop Inspection Form 06/25/16
4. Shop Inspection Form 12/07/16
5. Shop Inspection Form 10/31/17
6. Shop Inspection Form 10/09/18
7. Shop Inspection Form 11/16/19
8. Shop Inspection Form 08/29/19
9. Shop Inspection Form 06/24/21
10. Shop Inspection Form 10/13/21
11. Shop Inspection Form 04/25/22
12. Inspection Photo – Implements
13. Inspection Photo – License Photo
14. Inspection Photo – License Photo
15. Inspection Photo -- Sterilization
16. Inspection Photo – Spa Agitator
17. Inspection Photo Super Primer
18. Inspection Photo – Implements
19. Inspection Photo – Implements
20. Inspection Photo – Implements
21. Inspection Photo – Implements
22. Inspection Photo – Implements
23. Inspection Photo – Implements
24. Inspection Photo – Implements
25. Inspection Photo Surface
26. Inspection Photo – Surface
27. Inspection Photo – Implements
28. Inspection Photo – Spa Agitator

b. No Exhibits were submitted by Licensee.

c. Sworn testimony was received from:

1. Sandra Hodgdon, Investigator (called by Hearing Counsel)
2. Chau N. Nguyen, Licensee Shop Owner and Personal License Holder (called by Licensee)¹

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared in-person for the hearing as follows: authorized representative/shop owners Nguyen and Tran (#3754) and licensed manicurist Nguyen (#28206). Accompanying the Licensee was a Vietnamese translator appointed by the Board to assist the Licensee at the hearing. Hearing Counsel has the burden of proving its case by a preponderance of the evidence. The Presiding Officer admitted all of Hearing Counsel's evidentiary exhibits on an individual basis after they were authenticated through testimony and Licensee was provided the opportunity to object to each. No objections were made. Hearing Counsel called one witness, Sandra Hodgdon. Licensee presented no exhibits and called Chau Nguyen as a witness. The credible evidence presented at the hearing allows the Board to find the following facts.

Sandra Hodgdon, OPLC Investigator

Sandra Hodgdon was sworn and testified that she is an investigator for OPLC Enforcement who conducts Board inspections. She explained that in her role as an investigator, she became acquainted with the Licensee through an inspection of the Licensee's premises held on 04/25/22. Ms. Hodgdon authenticated Exhibit 11, which is her 04/25/22 inspection report for the Licensee's shop premises. She testified that she found the violations contained in Exhibit 11, which enumerates, among other things, the following concerns: 1) dirty files, implements, pumices, foot spa agitators, and stations; 2) reuse of toe separators; 3) and no EPA disinfectant. She testified that the latter observation about the disinfectant indicated to her that the Licensee had no ability to sterilize any of its implements. Aside from hygiene-related violations, Ms. Hodgdon also noted that certain current licenses were either not posted or failed to have the required photograph on it. She testified that she assessed 1,787 violation points during the

¹ The Presiding Officer also swore in the translator, with the standard language used in New Hampshire courtrooms.

inspection. Ms. Hodgdon explained that she had taken photographs, which show many of the violations she observed. She identified these photographs as being Exhibits 12-28.

According to Ms. Hodgdon's testimony, during the inspection she reviewed with Chau N. Nguyen (one of the shop owners and a licensee of the Board) the concerns noted in her 04/25/22 inspection report and explained how to address them. Following Ms. Hodgdon's testimony, Hearing Counsel asked the Board to take administrative notice of its file in reference to Exhibits 2 through 10, which include the Licensee's shop application and inspection reports of the Licensee's premises on 06/25/16, 12/07/16, 10/31/17, 10/09/18, 08/29/19, 11/16/19, and 06/24/21, respectively. The first two of these exhibits show that the Licensee applied for licensure and had the shop approved through an initial inspection that was conducted to ensure the shop was in compliance with Board laws and rules. The application also has a section that requires the Licensee to acknowledge he or she has read the Board laws and rules and his or her shop is in compliance with them. Exhibit 2 shows that both shop owners for the Licensee signed this form. The rest of the exhibits show that the Licensee has violated similar hygiene-related board rules at nearly all inspections conducted by the Board. Likewise, a few of these inspection reports show violations related to licensing requirements that are similar in nature to the kind referenced in the 04/25/22 inspection report.

Chau N. Nguyen, Licensee Shop Owner

Chau N. Nguyen, Licensee Shop Owner, was sworn in under oath and testified both on her own and through the translator. She stated she had posted the licenses as required and had barbercide on the premises on the day of the inspection. She testified that she has implemented multiple changes at her business since the 04/25/22 inspection report, which are intended to address the issues shown in Exhibits 12-28. She provided the following examples of changes: 1) she cleans the foot agitators every day; 2) there is an MSDS sheet; 3) she has adopted use of several single use items for customer use; and 4) she

has adopted a new cleaning procedure for cuticles, whereby she washes them with soap and a brush, puts them in barbercide and lets them dry. Board questioning revealed that the Licensee did not realize that there were varying time requirements for disinfectants to rest on products being disinfected before they are sterilized. She indicated she will take note of that moving forward.

REBUTTAL TESTIMONY

Sandra Hodgdon briefly testified again to rebut some of the information provided by the Licensee. She testified that she saw no evidence during her inspection on 04/25/22 that any of the Licensee's implements were washed with soap and water. She also indicated that she saw no barbercide at the shop on 04/25/22. She couched her testimony by explaining she has not reinspected the shop since the 04/25/22 report.

V. DISCUSSION AND FINDINGS OF FACTS / CONCLUSIONS OF LAW:

After reviewing all the evidence, accounting for the the presentation and demeanor of all the witnesses, and drawing all reasonable inferences therefrom the Board finds, by a preponderance of the evidence, that the Licensee (both as an individual licensee and shop licensee of this Board) committed professional misconduct. The Exhibits and witness testimony more than adequately support the conclusions that 1) the 04/25/22 shop violations noted by Ms. Hodgdon at Daisy Nails occurred; 2) the shop owner Licensee was present at the shop and working on 04/25/22; and 3) the Licensee shop and Licensee shop owners have a significant history of making the same and/or similar violations since 2016. As part of this decision, and based upon the evidence presented and the findings of facts made herein the Board draws the conclusions of law:

A. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(c)(See Rule 404.09) by operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/25/22: 6 dirty agitators, 6 missing records for cleaning of agitator spas, 3 non-disinfected tables, 23 implements not properly cleaned, disinfected, or stored, 54 implements not disposed that require disposal, no EPA registered disinfectant on premises, and no SDS sheets.

B. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(d)(*See* Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of receiving similar hygiene-related violations in the past, operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/25/22: 6 dirty agitators, 6 missing records for cleaning of agitator spas, 3 non-disinfected tables, 23 implements not properly cleaned, disinfected, or stored, 54 implements not disposed that require disposal, no EPA registered disinfectant on premises, and no SDS sheets.

C. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(i)(*See* Rule 404.09) by operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/25/22: 6 dirty agitators, 6 missing records for cleaning of agitator spas, 3 non-disinfected tables, 23 implements not properly cleaned, disinfected, or stored, 54 implements not disposed that require disposal, no EPA registered disinfectant on premises, and no SDS sheets.

D. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(g)(*See* Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of receiving similar hygiene-related violations in the past, operating and working in a shop with the following health and safety violations, as set out in the inspection report, dated 04/25/22: 6 dirty agitators, 6 missing records for cleaning of agitator spas, 3 non-disinfected tables, 23 implements not properly cleaned, disinfected, or stored, 54 implements not disposed that require disposal, no EPA registered disinfectant on premises, and no SDS sheets.

E. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(c)(*See* Rule 404.09) by operating a shop with 3 licenses not displayed and 3 licenses displayed without a photograph of the licensee.

F. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(d)(*See* Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of receiving similar license-related violations in the past, operating a shop with 3 licenses not displayed and 3 licenses displayed without a photograph of the licensee.

G. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(i)(*See* Rule 404.09) by operating a shop with 3 licenses not displayed and 3 licenses displayed without a photograph of the licensee.

H. The Licensee Nguyen and Licensee shop committed misconduct as defined at RSA 313-A:22, II(g)(*See* Rule 404.09) by, despite acknowledging being familiar with applicable Board law and having a pattern of receiving similar license-related violations in the past, operating a shop with 3 licenses not displayed and 3 licenses displayed without a photograph of the licensee.

I. Pursuant to RSA 313-A:22(III)(c), and upon a finding of professional misconduct under section (II), the Board hereby **REVOKES** Licensee's shop license #3754.

J. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee Nguyen's personal licenses (#28206) until the following occurs:

- a. Pursuant to RSA 313-A:22(III)(d) and upon a finding of professional misconduct under section (II), the Board directs the Licensee shop owner to participate in 12 hours of program(s) of continuing education in the areas of sanitation and disinfection. To document successful completion of the course(s), the Licensee shall provide the Board with written documentary proof issued/authored by the program offering the course(s). **Whether any program(s) meets the requirements of this section shall be determined by the Board. Therefore, the Licensee is strongly encouraged to seek the Board's pre-approval of program(s) before taking them.** The Board has authorized the Board's Chair to pre-approve courses on its behalf, so that the Licensee does not have to wait until a meeting to learn whether coursework she wishes to take is acceptable. The Licensee can submit information about proposed programs to the Board's Administrator, who shall present same to the Board Chair for determination.

K. Pursuant to RSA 313-A:22(III)(e) and Rule 404, and upon a finding of professional misconduct under section (II), the Board affirmatively imposes an administrative fine of \$1,787.00 against the Licensee's shop license #3754, representing the cumulative point values for the violations noted in the 04/25/22 inspection report. Said administrative fine is assessed after hearing pursuant to Rule 404.11. In doing so the Board considered the Licensee shop's 1) long history of noncompliance with RSA 313-A, rules, or directives; and 3) awareness of RSA 313-A and the board's rules through that prior history. The administrative fine shall be paid within 180 days of the below signed date of this final order.

L. Pursuant to RSA 332-G:11, the Board affirmatively assesses against the Licensee's shop license #3754 the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00. The administrative fine and cost of investigation shall be paid within 30 days of the below signed date of this final order.

M. Pursuant to RSA 313-A:22(g), if Licensee shop or Licensee Nguyen fails to comply with any terms or conditions imposed upon it or her by this Final Decision, said failure shall constitute misconduct pursuant to RSA 313-A:22, and a separate and sufficient basis for further disciplinary action by the Board against the Licensee shop and shop owner.

N. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d). The Board notes that the factors contained in Rules 402.01(d)(1), (2), (3), (6), and (7) weighed heavily in favor of the Board's decision to revoke the shop license and suspend the Licensee's personal license.

O. Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensee shop and Licensee Nguyen are subjected to the above-referenced discipline as the minimum sanctions that the Board believes

will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee shop, Licensee Nguyen, and any other licensees from engaging in such misconduct in the future.

P. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee Shop and Licensee Nguyen, in-hand, by OPLC staff. A copy of this order shall also be sent to the Licensee by certified mail, return receipt requested, first class mail, and by also by email (if reasonably practical).

VI. CONCLUSION AND DECISION:

Pursuant to RSA 313-A:22 and Rule 402, the Board hereby **REVOKES** Licensee's shop license (#3754), **SUSPENDS** Licensee's personal license (#28206), and imposes the further discipline as outlined above.

DATED: 1/20/2023

_____/s/ Nikolas K. Frye, Esq._____
Nikolas K. Frye, Esq., Hearings Examiner
Authorized Representative of the
Board of Barbering, Cosmetology, and Esthetics-
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301