

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

**In Re: Elite Nails,
Shop Lic. #2646**

**Phuong Pham, Owner
Personal License #35305**

**Phuong Dau, Owner
Personal License #16141**

Docket No.: 22-BAR-0018

NOTICE OF DECISION DATED 7/7/2023

Enclosed please find a copy of the Board’s Order dated 7/7/23 relative to: Elite Nails

DISCIPLINARY HEARING FINAL DECISION AND ORDER

MOTIONS/PETITIONS FOR RECONSIDERATION OR REHEARING:

Pursuant to N.H. Code Admin. R. Plc 206.29(a) (“Rules”) and RSA 310:14, II, motions/petitions for reconsideration or rehearing shall be filed within 30 calendar days after service of a final adjudicative order. Pursuant to Rule 206.29(b), the Motion/Petition shall: 1) clearly identify points of law or fact that the movant asserts the Board and/or Presiding Officer has overlooked or misapprehended; 2) contain such argument in support of the motion as the movant desires to present; and 3) be served by the movant on all other participants in accordance with Rule 206.11. Pursuant to Rule 206.29, no answer to a motion/petition for reconsideration or rehearing shall be required, but any answer or objection filed shall be delivered to the Presiding Officer’s Office within 5 working days following receipt of service of the motion/petition for reconsideration. Pursuant to RSA 541:5, upon the filing of such motion/petition for rehearing or reconsideration, the Board or Presiding Officer shall within ten days either grant or deny the same, or suspend the order or decision complained of pending further consideration, and any order of suspension may be upon such terms and conditions as the Board or Presiding Officer may prescribe.

RIGHT TO APPEAL:

Pursuant to RSA 310:14, III, appeals from a decision on a rehearing and/or motion for reconsideration shall be by appeal to the New Hampshire Supreme Court pursuant to RSA 541. Pursuant to RSA 541:6, within 30 days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the decision on such rehearing, the applicant may appeal by petition to the New Hampshire Supreme Court. Pursuant to RSA 310:14, III, no sanction shall be stayed by the Board during an appeal.

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**In Re: Elite Nails,
Shop Lic. #2646**

**Phuong Pham, Owner
Personal License #35305**

**Tuan Anh Tran, Owner
Unlicensed personally**

**Phuong Dau, Owner
Personal License #16141**

Docket No.: 22-BAR-0018

**FINAL DECISION AND
ORDER– 6/26/23**

I. ATTENDEES:

Jeanne Chappell, Board Chair
Kimberly A. Hannon, Board Member
Sarah Partridge, Board Member
Joshua Craggy, Board Member
Donna Woodsom, Board Member
Talia Wilson, Board Administrator
Shana Warriner, Board Administrator
Elizabeth Eaton, Esq., Board Counsel
Nikolas Frye, Esq., OPLC Hearings Officer
Tuan Anh Tran, Current Shop Owner
Madeline Blackestone, Esq., Counsel for Tuan Anh Tran
Marissa Shuetz, Esq., OPLC Prosecutor
Sandra Hodgdon, Inspector for OPLC

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 07/20/22, 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 Elite Nails (“Licensee”) in relation to a complaint received on 04/28/22 alleging the Licensee’s shop was unsanitary. During the inspection, OPLC assessed 4,516 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 08/15/22. On 12/12/22 the hearing scheduled for 12/19/22 was continued. On 2/13/23 the Board approved Hearing Counsel’s Motion for Joinder and to Amend the pleadings for the reasons set forth in the Motion. Licensee Tuan Anh Tran and Licensee Phoung Dau were joined to the above referenced matter and this Notice includes the requested amendments. On 3/13/23 the Board reviewed an additional complaint filed with enforcement on 2/8/23 and voted to combine the complaint to matter 22-BAR-0018. 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. (24) Exhibits were submitted by Hearing Counsel, numbered as follows:

Exhibit 1	4/28/22 email complaint	HC0001
Exhibit 2	7/20/22 inspection report	HC0002
Exhibit 3	7/21/22 memo of inspection	HC0005
Exhibit 4	8/5/22 change of owner inspection - Phuong Anh Pham	HC0007
Exhibit 5	10/10/22 follow up memo of sale to Tran	HC0008
Exhibit 6	10/4/22 email Phuong Pham terminate 5198	HC0010
Exhibit 7	10/6/22 email Tuan Tran/Thanh Danh for new inspection	HC0011
Exhibit 8	10/17/22 shop application - Tuan Anh Tran	HC0014
Exhibit 9	9/29/22 P&S – Tuan Tran	HC0016
Exhibit 10	12/19/22 follow up memo	HC0017
Exhibit 11	2/8/23 complaint	HC0019
Exhibit 12	2/16/23 memo regarding new complaint	HC0021
Exhibit 13	Tuan A. Tran response	HC0022
Exhibit 14	12/28/11 new owner application GK Nails – Phuong Dau	HC0023
Exhibit 15	1/4/12 inspection GK Nails – Phuong Dau	HC0028
Exhibit 16	10/23/18 Elite inspection	HC0029

Exhibit 17	2/18/21 Phuong Anh Pham improper renewal for 2646	HC0030
Exhibit 18	Shop 2646 MLO	HC0031
Exhibit 19	Shop 5198 MLO	HC0032
Exhibit 20	Phuong Dao 16141 MLO	HC0033
Exhibit 21	Phuong Anh Pham 35305 MLO	HC0034
Exhibit 22	Thu Tran 22569 MLO	HC0035
Exhibit 23	Elite Nails Financial Statements Sep. 2022 through Apr. 2023	HC 0036
Exhibit 24	Timeline of Ownership of Elite Nails	HC 0067

b. No Exhibits were submitted by the Licensees/Shop Owners.

c. Sworn testimony was received from:

1. Sandra Hodgdon, OPLC Inspector (offer of proof, called by Hearing Counsel)

IV. PRELIMINARY MATTERS:

Former shop owners and Licensees Phuong Pham and Phuong Dau failed to appear for the hearing on the date and time stated in the Notice of Hearing. The record shows that more than 15 days before the hearing, the Board mailed the notice of hearing via first-class mail and certified mail, return receipt requested to the addresses provided by Phuong Pham and Phuong Dau and contained in their MLO profiles.¹ The Board’s record contains a copy of the Notice of Hearing and certified mail receipts dated 05/02/23 and return receipts stating, “return to sender”. Additionally, the record shows that on 05/02/23 the Board emailed Licensees Phuong Pham and Phuong Dau an electronic copy of the notice of hearing to the respective email addresses on file for each of the Licensees. The emails were not returned undeliverable. The Notice of Hearing in the Board’s record states that the hearing is scheduled for 06/26/23 at 9:30 AM EST and will take place at OPLC, 7 Eagle Square, Concord, New Hampshire 03301. It also contains the information required by RSA 541-A:31. The record contains no correspondence from

¹ The Board’s record also contains previous certified mailing records for notices of hearing that were previously sent to these Licensees in this matter.

Pham or Dau in which either indicates an inability to make the hearing or requests a continuance. Hearing Counsel explained that she had sent Licensees Phuong Pham and Phuong Dau email communication to the respective email addresses on file with the Board for each Licensee and they did not “bounce back”. The Presiding Officer also notes that Licensees Phuong Pham and Phuong Dau previously failed to appear for a 06/12/23 prehearing conference in this matter and for which they were noticed.

Based upon the foregoing, the Board concluded that it has complied with the service requirements of RSA 313-A:23, RSA 541-A, RSA 310-A, Rules 206.02(a), and 206.03(a). The Board additionally found that it has provided “notice reasonably calculated, under all the circumstances, to apprise ... [the Licensee] ... of the pendency of the action and afford ... [him] ... an opportunity to present ... [his] ... objections.” *See, i.e., Jones v. Flowers*, 547 U.S. 220, 225-26 (2006). Although not necessarily required in this situation, the Board also found its record demonstrates that the Board took “additional reasonable steps” to provide notice to the Licensee. *See Id.* Pursuant to Rule 210.02(b), the Board therefore concluded that Licensees Phuong Pham and Phuong Dau were in default pursuant to Rule 203.01(c).

As an additional matter, Licensee Tuan Anh Tran and Hearing Counsel presented a proposed Settlement Agreement that addressed his alleged misconduct in this proceeding. Licensee Tuan Anh Tran had no objection to Hearing Counsel’s Exhibits 1-24, which were considered in relation to the proposed Settlement Agreement. After a brief non-meeting to discuss the law with Board Counsel, the Board approved the Settlement Agreement in public session and excused Licensee Tuan Anh Tran and his counsel. The Board also accepted for consideration Hearing Counsel’s 06/22/23 “Proposed Findings of Fact and Conclusions of Law, and Recommended Sanctions”, which related to the disciplinary hearing against Phuong Pham and Phuong Dau.

V. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

Pursuant to Rule 211.02(a), Hearing Counsel has the burden of proving its case by a preponderance of the evidence. The Presiding Officer fully admitted Hearing Counsel's (24) Exhibits, after determining they were material and relevant to the proceedings against Phuong Pham and Phuong Dau in their capacities as former shop owners of the business now known as Elite Nails, and as personal license holders regulated by this Board. Licensees Pham and Dau submitted (0) Exhibits. Hearing Counsel called OPLC Inspector Sandra Hodgdon to testify and made an offer of proof on her behalf.

Sandra Hodgdon, OPLC Inspector

Sandra Hodgdon was sworn and testified that she has reviewed the proposed findings of fact contained in Hearing Counsel's 06/22/23 "Proposed Findings of Fact and Conclusions of Law, and Recommended Sanctions" and they are true and accurate to the best of her knowledge and belief. During the offer of proof, Hearing Counsel consistently referenced Exhibit 24, which is a timeline of ownership of Elite Nails.

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

After reviewing all the evidence, accounting for the presentation and demeanor of the witness, and drawing all reasonable inferences therefrom, the Board finds, by a preponderance of the evidence, that both Licensee Phuong Pham and Licensee Phuong Dau committed professional misconduct in their capacities as shop owners of the business now known as Elite Nails, and as individual licensees of this Board. The Board adopts Hearing Counsel's "Proposed Findings of Fact" (paragraphs 1-29) as its findings of fact and incorporates them by reference into this Order:

1. Elite Nails is a nail salon located at 379 S. Willow Street, Unit A-5, Manchester, NH. Exhibit 2.
2. On or about December 28, 2011, Phuong Dau – manicurist license #16141 ("Licensee Dau") purchased the shop GK Nails, located at 379 S. Willow Street, Unit A-5, Manchester, NH. Exhibit 14.

3. After inspection, shop license #2646 was transferred to Licensee Dau as new owner on January 4, 2012. Exhibit 15.
4. Subsequently, the shop name changed from GK Nails to Elite Nails (“Elite Nails”). Exhibits 16 and 18.
5. Sometime in February 2021, Phuong Pham – manicurist license #35305 (“Licensee Pham”) purchased the shop Elite Nails from Licensee Dau but failed to apply for a new shop license. Exhibits 2 and 3.
6. Instead, Licensee Pham submitted a *renewal* for shop license #2646 in February 2021, with her signature as owner. Exhibits 3 and 17.
7. OPLC staff changed the owner’s name from Phuong Dau to Phuong Pham based on that renewal form. Exhibits 3 and 17.
8. Prior to August 2022, the Board never received a new shop license application or change of owner form from Licensee Pham related to the shop Elite Nails and shop license #2646.
9. On or about April 28, 2022, the Board received a complaint against the shop “Elite Nails”. Exhibit 1.
10. As a result of that complaint, the Board ordered an inspection, which was conducted on July 20, 2022. Exhibit 2.
11. During the July 20, 2022, inspection, Inspector Hodgdon observed and noted the following violations of Board health, safety, and licensure rules: Exhibits 2 and 3:
 - a. 5 dirty foot spa agitators;
 - b. 18 dirty metal implements not cleaned, disinfected, or stored properly;
 - c. 2 improperly displayed licenses;
 - d. 6 metal rasp files with blades;
 - e. Depleted first aid kit;
 - f. No safety data sheets available;
 - g. Incomplete cleaning logs for 6 pedicure chairs;
 - h. Dirty station drawers; and
 - i. Multiple single use items improperly disposed.
12. In total, Inspector Hodgdon assessed 4,516 violation points. Exhibit 2.
13. At the time of the inspection, Licensee Pham was present and identified herself as the owner of Elite Nails, stating she originally purchased the shop from Licensee Dau in February 2021, and then sold it back to Licensee Dau for a period of time while she was on maternity leave. Licensee Pham then stated she purchased the shop back from Licensee Dau on or about July 18, 2022. Exhibits 2 and 3.
14. Licensee Pham was the owner of record at the time of the April 28, 2022, complaint. Exhibits 3 and 17.

15. However, Licensee Dau was the owner-in-fact of Elite Nails at the time of the April 28, 2022, complaint. Exhibits 2 and 3.
16. Licensee Pham was the owner of record and owner-in-fact of Elite Nails at the time of the July 20, 2022, inspection. Exhibits 2, 3, and 17.
17. On or about August 5, 2022, a new shop inspection was conducted on Elite Nails, with Licensee Pham named as owner. Exhibit 4.
18. Shop license #5198 was issued to Elite Nails with Licensee Pham as owner on August 5, 2022, and shop license #2646 was terminated. Exhibits 4, 18, and 19.
19. On October 4, 2022, Licensee Pham emailed OPLC stating she sold the shop Elite Nails and requested to terminate shop license #5198. Exhibits 5 and 6.
20. Shop license #5198 was terminated on October 4, 2022. Exhibit 19.
21. OPLC Inspectors observed the shop being open for business, with lights on and customers entering and exiting, on October 5, 2022. Exhibit 10.
22. The Bill of Sale states the transfer of ownership of Elite Nails from Licensee Pham to Tuan Anh Tran, who does not hold a license issued by the Board, (“Tuan”)¹ occurred September 29, 2022, five days prior to Licensee Pham’s email to OPLC. Exhibit 9.
23. On or about October 17, 2022, eighteen days after the sale, Tuan and Thu Tran cosmetology license #22569 (“Licensee Thu”) submitted a change of ownership application for Elite Nails, naming Tuan as owner and Licensee Thu as manager. Exhibits 7 and 8.
24. The Board denied the application on or about December 19, 2022. Exhibit 8.
25. On or about February 8, 2023, OPLC Enforcement received a complaint regarding Licensee Thu, with allegations of an incident occurring at Elite Nails, on or about February 3, 2023, to which Tuan provided a response denying the allegations of reusing materials. The response did not acknowledge or address the fact that the alleged incident occurred on a day where the shop was unlicensed and therefore should not have been operating. Exhibits 11, 12, and 13.
26. During that time the shop Elite Nails did not have a valid license to operate.
27. The Board did not request an inspection be conducted after the February complaint was received.
28. Inspectors were unable to conduct an inspection after the February 8, 2023, complaint, due the shop not appearing to be open during their usual inspection hours of Monday through Friday 8:00am to 4:00pm.
29. The shop was open and operating during the months of September, October, November, and December.

Hearing Counsel’s Proposed Findings of Fact, Conclusions of Law, and Recommended Sanctions, Pars. 1-29.

Based upon the evidence presented and the above findings of fact the Board, makes the following conclusions of law:

A. Licensee Phuong Pham engaged in professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and RSA 313-A:22, II(i) (*see* Rules 404.09, 302.05 et seq., and 302.07 et seq.) by operating a shop with the health and safety violations set out in Sandra Hodgdon's inspection report for the Licensee's shop dated 07/20/22.

B. Licensee Phuong Pham engaged in professional misconduct as defined at RSA 313-A:22, II(c), RSA 313-A:22, II(d), and RSA 313-A:22, II(i) (*see* Rules 404.09, 302.05 et seq., and 302.07 et seq.) by operating a shop without licenses properly displayed, as set out in Sandra Hodgdon's inspection report for the Licensee's shop dated 07/20/22.

C. Licensee Phuong Pham engaged in professional misconduct as defined at RSA 313-A:22, II(a), RSA 313-A:22, II(c), and RSA 313-A:22, II(i) (*see* Rules Bar 302.05(b)) by failing to notify the Board of changes in ownership of the shop, in writing, at least 21 days prior to new ownership taking effect.

D. Licensee Phuong Dau engaged in professional misconduct as defined at RSA 313-A:22, II(a), RSA 313-A:22, II(c), and RSA 313-A:22, II(i) (*see* Rules Bar 302.05(b)) by failing to notify the Board of changes in ownership of the shop, in writing, at least 21 days prior to new ownership taking effect.

E. Pursuant to RSA 313-A:22(III)(a), and upon a finding of professional misconduct under section (II), the Board hereby **REPRIMAND'S** Licensee Phuong Pham's personal license #35305 and takes the following additional disciplinary action against it as well:

- a. Pursuant to RSA 313-A:22(III)(e) and Rule 404.04, and upon a finding of professional misconduct, the Board affirmatively imposes on Licensee Phuong Pham an **ADMINISTRATIVE FINE** of \$5,016.00, representing the cumulative point value for the violations noted in the July 20, 2022, inspection report and failure to inform the Board of the transfer of ownership of the shop on at least one occasion. This administrative fine shall be paid within 180 days of the below signed date of this final order.
- b. Pursuant to RSA 332-G:11, the Board affirmatively assesses Licensee Phuong Pham, the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00. The cost of investigation and prosecution shall be paid within 30 days of the below signed date of this final order.

- c. The Board may deny or hold any new or renewal application from Phuong Pham until such time as all fines have been paid.

- F. Pursuant to RSA 313-A:22(III)(a), and upon a finding of professional misconduct under section (II), the Board hereby **REPRIMAND'S** Licensee Phuong Dau's personal license #16141 and takes the following additional disciplinary action against it as well:
 - a. Pursuant to RSA 313-A:22(III)(e) and Rule 404.04, and upon a finding of professional misconduct, the Board affirmatively imposes on Licensee Phuong Dau an **ADMINISTRATIVE FINE** of \$500.00, representing the point value for the failure to inform the Board of the transfer of ownership of the shop on at least one occasion. This administrative fine shall be paid within 180 days of this order.

 - b. The Board may deny or hold any new or renewal application from Phuong Pham until such time as all fines have been paid.

- G. Pursuant to RSA 313-A:22(g), if Licensee fails to comply with any terms or conditions imposed 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.

- H. In determining what sanctions to impose, the Board considered RSA 313-A:22 and the factors enumerated in Rule 402.01(d).

- I. Pursuant to RSA 313-A:22 and Rule 402.01(d), the Licensee is subjected to the above-referenced discipline as the minimum sanction that the Board believes will, based on the facts and circumstances of this particular case, both protect the public and deter Licensee and any other licensees from engaging in such misconduct in the future.

VII. CONCLUSION AND DECISION:

Pursuant to RSA 313-A:22 and Rule 402, the Board hereby **REPRIMANDS** the licenses of Phuong Pham and Phuong Dau, and subjects them to the further discipline outlined above.

DATED: 7/7/2023

/s/ Nikolas K. Frye, Esq.
Nikolas K. Frye, Esq. Hearings Officer
Authorized Representative of the
Board of Barbering, Cosmetology, and Esthetics-
New Hampshire Office of
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