

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

**In Re: A Little Off the Top
Shop Lic. #2596
Tanning Registration #452**

Docket No.: 2023-BAR-029

**ORDER OF EMERGENCY
SUSPENSION – 08/18/2023**

I. CASE SUMMARY/PROCEDURAL HISTORY:

On 08/17/2023, the Office of Professional Licensure and Certification, Division of Enforcement (“OPLC Enforcement”) petitioned the Board of Barbering, Cosmetology, and Esthetics (“Board”) to emergently suspend the shop license and tanning registration of A Little Off the Top (“Licensee”) through a *Verified Petition for Emergency Temporary Suspension of Licensure Pursuant to RSA 310:12, IV and N.H. Code Admin. R. Title PLC 206.07*. On 08/18/2023, the Board held an emergency meeting during which it voted to immediately suspend Licensee’s shop license and tanning registration on an emergency basis pursuant to RSA 310:12, IV, RSA 541-A:30, III, and N.H. Code Admin. R., Title Plc 206.07 et seq. (“Rules”). This Order of Emergency Suspension follows.

II. LEGAL STANDARD:

“In cases involving imminent danger to public health, safety, or welfare, a board may order immediate suspension of a license or certification pending an adjudicative proceeding before the board to determine if the suspension should remain in place pending final adjudication of the matter.” RSA 310:12, IV. The Office of Professional Licensure and Certification has further interpreted that to mean that the Board “... shall issue an order that immediately suspends the respondent’s license based on: (1) [a] determination

that there is a reasonable basis to believe that public health, safety, or welfare requires emergency action...” Rule 206.07(a)(1).

III. EVIDENCE PRESENTED AND FINDINGS OF FACT:

A. Evidence Presented

The Board was presented with and/or considered the following evidence: “Verified Petition for Emergency Temporary Suspension of Licensure...” filed by OPLC Chief Inspector Sandra Hodgdon and OPLC Electrical Inspector Ken Vallery dated August 17, 2023. The Board also relied on its expertise in the field it regulates. A review of the evidence presented, and the reasonable inferences taken there from, allows the Board to find the following facts.

B. Findings of Fact

The Board hereby adopts the factual allegations contained in paragraphs 1-13 in the “Verified Petition...”, which are incorporated by reference herein as the Board’s findings of fact. A copy of the “Verified Petition...” is attached hereto.

IV. CONCLUSIONS OF LAW:

The Board concludes there is a reasonable basis to suspend the Licensee’s New Hampshire shop license and tanning registration on an emergency basis pursuant to RSA 310:12, IV. The central facts are straightforward- On 08/04/2023, Chief Solomon of the Conway Fire Department conducted an inspection of the Facility which yielded multiple serious electrical and fire code violations. Chief Solomon noticed the shop owners of the violations and advised “[the] violations are a safety hazard to you, your employees, and your customers as well as a fire threat to the building. To mitigate the hazard, you need to stop using the clothes dryer and the stand up tanning booth until they are properly wired by a licensed electrician.” On 08/15/2023, OPLC Chief Inspector Hodgdon and Electrical Inspector Vallery performed an inspection of the facility and observed the following: (1) the shop was open to the public; (2) the clothes dryer was

being used, (3) and the tanning booths appeared open and available for use. The Licensee's conduct on its face warrants immediate emergency suspension of the shop license and tanning registration, pending a follow-up emergency suspension hearing/disciplinary hearing.

V. ORDER:

Pursuant to RSA 310:12, IV and Rule 206.07(a), the Board hereby orders the immediate emergency suspension of the Licensee's shop license and tanning registration, pending a follow up emergency hearing in this matter. A Notice of Emergency Hearing with an appropriate date/time shall follow forthwith.

DATED: 8/18/2023

_____/s/ Shane D. Goulet, Esq._____
Shane D. Goulet, Esq., Hearings Examiner
Presiding Officer
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301

STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS
CONCORD, NH 03301

In the matter of:
A Little Off the Top
Tanning Registration #452
Shop License #2596

Docket No. TBD

VERIFIED PETITION FOR EMERGENCY TEMPORARY SUSPENSION OF
LICENSURE PURSUANT TO RSA 310:12, IV AND N.H. CODE ADMIN. R. TITLE PLC
206.07

NOW COMES the Office of Professional Licensure and Certification (“OPLC”), Division of Enforcement (“Division”), and hereby petitions the New Hampshire Board of Barbering, Cosmetology and Esthetics (“Board”) to emergently suspend the shop license #2596 and tanning registration (#452) of A Little Off the Top (“Facility or Shop”) located at 234 White Mountain HWY, Conway, NH 03818 a licensed shop and registered tanning facility stating in support as follows:

BACKGROUND

1. The Board first granted Kimberly Wakefield, (“Licensee or Owner”) tanning registration #452 on 05/02/2016 and shop license #2596 on 05/28/2004.
2. On or about 04/24/23, OPLC conducted a routine inspection of Facility in Conway N.H.
3. During the 04/24/23 Inspection, Inspector Shannon Avery documented that none of the staff operating the Facility were certified, the Facility was allowing underage patrons to utilize their tanning equipment, and all patrons were allowed to set, control, and extend their own exposure times.

4. On 05/02/23, the Board voted to suspend the Licensee's license on an emergency basis pursuant to RSA 541-A:30(III), RSA 310-A:1-m, RSA 313-A:32, and N.H. Code Admin. R., Title Bar 402.03(a) ("Rules"), and/or N.H. Code Admin. R., Title Plc 206.07 ("Plc").
5. The Board held an emergency adjudicatory hearing on 05/15/23 to determine whether the Licensee's registration to operate her tanning facility presented an imminent threat to public health safety, or welfare such that her registration should remain emergently suspended pending a full investigation and possible final disciplinary action.
6. On 05/26/23, in a Margin Order, the Board lifted the emergency suspension on the Licensee's registration to operate her tanning facility.

Sworn Testimony at Emergency Hearing

7. During the 05/05/23 hearing, Kim Wakefield, Owner, called Mr. Tyrone Wakefield to testify in her defense.
8. Mr. Tyrone Wakefield testified that he would perform the work to rewire the tanning timer such that patrons could no longer set their own exposure time.
9. On cross examination, Mr. Tyrone Wakefield testified that he does not hold a license as an electrician in the State of New Hampshire.

State of New Hampshire Electrical Inspection

10. On 07/18/23, Electrical Inspector Ken Vallery of OPLC performed an inspection of Facility and issued a warning citing electrical work was being performed without lawfully obtaining a license or registration card to do so.

Conway Fire Department Inspection

11. On 08/04/23, Stephen Solomon, Chief of Conway Fire Department, conducted an inspection of Facility.

12. On 08/08/23, Chief Solomon sent Kim Wakefield, Owner of Facility, and Mr. Tyrone

Wakefield a letter summarizing the inspection which states in relevant parts:

- a. “This inspection was initiated after the State Electrical Inspector notified m[e] of serious Fire Code violations at your business. The inspection revealed a number of issues caused by improper construction and electrical work being done. These violations are a safety hazard to you, your employees, and your customers as well as a fire threat to the building. To mitigate the hazard, you need to stop using the clothes dryer and the stand up tanning booth until they are properly wired by a licensed electrician.”
- b. “1. There are numerous extension cords in use in the salon. Many of these cords are ‘daisy chained’ or plugged into other cords. This is not allowable. *Extension cords shall be plugged into an approved receptacle ...NFPA 1:11.1.5.1*”
- c. "2. There are extension cords that run through ceilings, walls, and are stapled to the wall. None of this is allowable. *Extension cords and flexible cords shall not be affixed to structures, Extend through walls, ceilings, or floors, or under doors or floor coverings, or be subject to environmental or physical damage. NFPA 1:11.1.5.5.*”
- d. “4. The salon chair area appears to be overloaded. Have your electrician conduct a load study and ensure the circuits feeding the chair area in front are not overloaded. *The total load shall not exceed the rating of branch circuit, and it shall not exceed the maximum loads specified in 220.18(A) through (c) under the conditions specified therein. NFPA 70:220.18*” (Including NFPA 70 Articles 240.4 and 240.5).

- e. “5. The clothes dryer is improperly vented. *All clothes dryers shall be exhausted to the outside air. NFPA 211:10.7.3.3*”
- f. “6. The dryer is incorrectly wired. The MC cable connected to the dryer receptacle appears undersized. It is, at most, 10 gauge, but may only be 12 gauge. Typically 6 gauge wire is required for that amperage. Have your electrician determine the correct wire for this application and properly rewire the dryer. *Ampacities for conductors rated 0 to 2000 volts shall be as specified in the Ampacity table 310.16 through 310.12 ... NFPA 70:310.15*”
- g. “10. The stand-up tanning booth is improperly wired. A disconnect within sight of the unit is required. *A disconnecting means for the motor (fan) shall be located within sight from the motor and driven machinery location. NFPA 70:430.102(B)(1)*” (including NFPA 70: 422.30 and 31.)
- h. “11. The stand-up tanning booth is improperly wired. The MC Cable is not properly secured to the structure. *Type MC Cable shall be supported and secured by staples, cable ties listed and identified for securement and support, straps, hangers, or similar fittings, or other approved means designed and installed so as not to damage the cable. NFPA 70:330.30(A)*” (Including subsections (B) – (D)).
- i. “The stand-up tanning booth and clothes dryer are UNSAFE TO OPERATE. You are to immediately stop using these appliances.”

Joint OPLC Follow-up Inspection

- 13. On 08/15/23, Sandra Hodgdon, Chief Inspector Barbering, Cosmetology and Esthetics, and Ken Vallery, Electrical Inspector performed an inspection of Facility which found:
 - a. The Facility was open for business.

- b. Numerous electrical cords were still in use with no apparent changes to address Conway Fire Department Letter paragraphs 1 and 2.
- c. The salon stations appeared to be in use with no apparent changes to address Conway Fire Department Letter paragraph 4.
- d. The clothes dryer was observed to be full of towels and the inside was hot/warm to the touch demonstrating continued use despite instruction to immediately stop use of the clothes dryer due to the unsafe risk of fire as noted in Conway Fire Department Letter paragraphs 5 and 6.
- e. The stand-up tanning booth was plugged in and appeared to open and available for use. No signs indicating “out of order” were present.

ARGUMENT

- 14. The investigation into the Facility is ongoing.
- 15. Pursuant to Bar 302.05(w): “Each shop or school shall comply with applicable local and state plumbing, electrical, and building codes.”
- 16. Pursuant to Bar 302.02(a): “A barber, cosmetology, esthetics, or manicuring shop shall have equipment necessary to safely perform barber, cosmetology, esthetics, or manicuring services.”
- 17. The Division has reason to believe, based on the above state facts, that A Little Off the Top Salon and A Little Off the Top Tanning pose an imminent danger to the public health, safety, and welfare due to the fire risk posed by fire code violations associated with the facility itself and with appliances (tanning booth and the clothes dryer).
- 18. After the Conway Fire Department letter, OPLC inspectors, Barbering and Electrical, confirmed that the Facility continues to use the clothes dryer despite the Fire Chief’s

*In re A Little Off the Top
Verified Petition
Board of Barbering, Cosmetology, and Esthetics*

warning placing the Licensee, Licensee's staff, Licensee's customers, the building, and the general public in imminent danger of health, safety, and welfare.

WHEREFORE, Sandra Hodgdon, Chief Inspector Barbering Cosmetology and Esthetics and Ken Vallery, Electrical Inspector, OPLC Division of Enforcement, on behalf of the Division, prays:

- A. The Board make a finding the Respondent is an imminent danger to the public health, safety, or welfare and emergently suspend the Facility license to conduct business as a shop #2596 and as a registered tanning facility #452 pursuant to RSA 310:12, IV and Plc 206.07.
- B. Grant further relief as justice requires.

I, attest and affirm the facts outlined in this *Verified Petition for Emergency Suspension of Licensure* pursuant RSA 310:12, IV and Plc 206.07 are true and accurate to the best of my knowledge and belief.

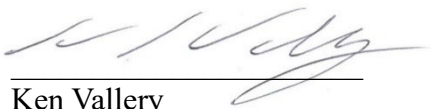
Date: August 17, 2023

Respectfully Submitted:

Sandra Hodgdon

Sandra Hodgdon
Chief Inspector
OPLC – Division of Enforcement

Date: August 17, 2023



Ken Vallery
Electrical Inspector
OPLC – Division of Enforcement