

**STATE OF NEW HAMPSHIRE
BOARD OF BARBERING, COSMETOLOGY AND ESTHETICS
121 SOUTH FRUIT ST
CONCORD, NEW HAMPSHIRE 03301**

In the Matter of:
Debbie Huynh
Personal Manicuring License Number: 17622
Shop License Number: 2890
(Adjudicatory Proceedings)

Docket No. 2017-16

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson and Presiding Officer
Joshua Craggy, Board Member
Jeanne Chappell, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Sandra Hodgdon, Board Inspector
Debbie Huynh, Respondent

BACKGROUND

On October 23, 2017 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Debbie Huynh ("Respondent") had violated RSA 313-A:22 II (d) and/or (i), RSA 313-A:22 II (g), and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 501.02 (e) and 501.02 (c).

As set forth in the Notice of Hearing, the purpose of the hearing was to determine whether the Respondent violated RSA 313-A:22 II (d) and/or (i), RSA 313-A:22 II (g), and/or Bar 501.02 (e), Bar 501.02 (c) by failing to maintain her shop in a sanitary and hygienic manner, knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics, and failing to observe the requirements of any rule adopted by the Board.

The Notice of Hearing noticed the hearing for 11:00 am on December 11, 2017. The Respondent appeared for the hearing as scheduled.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's five (5) exhibits:

- Exhibit 1, Shop Inspection Form for Colorful Nails dated September 2, 2014.

- Exhibit 2, Shop Inspection Form for Colorful Nails dated October 8, 2014.
- Exhibit 3, Shop Inspection Form for Colorful Nails dated December 8, 2014.
- Exhibit 4, Shop Inspection Form for Colorful Nails dated November 12, 2015.
- Exhibit 5, Shop Inspection Form for Colorful Nails dated November 16, 2016.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On September 23, 2004, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 17622. The manicuring license is the Respondent's personal license. On December 15, 2015, the Board granted the Respondent a license to practice cosmetology in the state of New Hampshire. The Respondent holds cosmetology license number 17622. The cosmetology license is the Respondent's personal license.

The Board has the authority to grant shop licensure in accordance with RSA 313-A:19. Pursuant to this authority, the Board may grant shop licensure to an individual who is the owner of the shop if this individual has a personal license as a barber, cosmetologist, manicurist, or esthetician. See RSA 313-A:19, II-a. On or about January 19, 2011, The Board granted the Respondent shop license number 2890.

The Board employs inspectors. See RSA 313-A:21. At least twice a year, the inspectors are "to enter and make reasonable examination and inspection of any salon...during business hours for the purpose of ascertaining whether or not the administrative rules of the Board and the provisions of this chapter are being observed." See RSA 313-A:21, I and III. If the inspector finds violations, the inspector may impose administrative fines. See RSA 313-A:8, XVII; 313-A:22, III; Bar 404.09; Bar 404.10 (converting violation points to administrative fines). For each inspection, the inspector must file a written report of his/her findings. See RSA 313-A:21, I.

On September 2, 2014 Inspector Sandra Hodgdon ("Inspector Hodgdon" or "Ms. Hodgdon") conducted an inspection of Colorful Nails. See Exhibit 1. Inspector Hodgdon found five (5) footspas that were not disinfected properly, twenty (20) implements that were not disinfected or stored properly, one (1) apprentice that was not wearing a name tag, and one (1) apprentice that did not send in hour sheets as required. Inspector Hodgdon imposed a fine of \$695.00.

On October 8, 2014 Inspector Hodgdon conducted an inspection of Colorful Nails. See Exhibit 2. Inspector Hodgdon found four (4) footspas that were not disinfected properly, five (5) implements that were not disinfected or stored properly, apprentices that were not properly

registered with the Board, and the inspection report not displayed. Inspector Hodgdon imposed a fine of \$792.00

On December 8, 2014, Inspector Hodgdon conducted an inspection of Colorful Nails. See Exhibit 3. Inspector Hodgdon found four (4) footspas that were not disinfected properly, twelve (12) implements that were not disinfected or stored properly, twenty-three (23) implements that were not discarded, and the inspection report was not displayed. Inspector Hodgdon also fined the Respondent for unprofessional behavior for yelling at her and refusing to sign the inspection report. Inspector Hodgdon imposed a fine of \$685.00.

On November 12, 2015, Inspector Beulah Green (“Inspector Green” or “Ms. Green”) and Inspector Hodgdon conducted an inspection of Colorful Nails. See Exhibit 4. Inspector Green and Inspector Hodgdon found four (4) footspas that were not disinfected properly, eighteen (18) implements that were not disinfected or stored properly, fourteen (14) implements that were not discarded, soiled towels not deposited into a container, an apprentice that was three (3) months behind in hour sheets, a license not posted as required, no Material Safety Data Sheet for the monomer liquid, two (2) unlicensed workers, and the unauthorized use of a wax pot. The Inspectors imposed a fine of \$2,222.00.

On November 16, 2016, Inspector Green and Inspector Hodgdon conducted an inspection of Colorful Nails. See Exhibit 5. Inspector Green and Inspector Hodgdon found one (1) footspa that was not disinfected properly, eighteen (18) implements that were not disinfected or stored properly, and twenty-four (24) implements that were not discarded. The inspector imposed a fine of \$352.00.

Inspector Hodgdon testified at the hearing. Inspector Hodgdon testified to each Exhibit, explaining her findings. Inspector Hodgdon also testified that the findings were repeated violations of the same disinfection issues and that each violation and correction procedure is explained to the owner or manager at the time of inspection. Inspector Hodgdon testified that the Respondent has paid towards her \$3,874.00 total fines, but still owes \$1,674.00.

II. Respondent’s Case

The Respondent testified at the hearing. The respondent stated she did not yell or swear at Inspector Hodgdon. The Respondent testified that a person called the Board to complain who was a Senator from Nashua. The Respondent further stated she was inspected every couple of months and that was not fair. The Respondent also testified that no one worked without a license, it was just late. The Respondent stated that it was impossible to have clean pedicure chairs; that even brand new chairs that are swabbed would still turn brown. The Respondent stated she pays the fine monthly, but if she continues to be fined her business could not survive combined with taxes.

III. The Board's Questions

In response to the Board's questions, The Respondent testified only one time the salon was fined for using wax when she was away. The Chair of the Board then stated she was fined twice and the wax pot was on in other inspections. The Respondent stated that was her mistake and she made a fine payment. Respondent stated she does want to learn and correct her mistakes.

Inspector Hodgdon was recalled to answer a question relative to the footspas. In response to the Board's question, Inspector Hodgdon stated she finds footspa filters that are sparkling clean and that she does not need to swab them, if she finds debris in the filter she will swab them and take a photo. Inspector Hodgdon also stated the Board did not receive any written complaints; the inspections were done as a follow up to previous violations.

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. In addition to making a specific finding that the above Background Narrative was true, the Board found that the Exhibits presented showed multiple violations for sanitation. The Exhibits showed the salon was fined for foot spas that were not disinfected properly and numerous implements which were not disinfected or disposed of properly. The Exhibits further showed violations for apprentice paperwork, expired licenses, lack of MSDS sheets, unauthorized use of wax pot, and unlicensed individuals working. The Board found the exhibits presented to be valid, accurate, and unbiased. The Board found Inspector Sandra Hodgdon's testimony to be forthright and credible. The Board found the Respondent to be less credible.

RULINGS OF LAW

1. On or about September 2, 2014, the Respondent violated RSA 313-A:22, II (d) and Bar 501.02 (e) by failing to maintain Colorful Nails in a sanitary and hygienic manner.
2. On or about October 9, 2014, the Respondent violated RSA 313-A:22 II (d) and Bar 501.02 (e) by failing to maintain Colorful Nails in a sanitary and hygienic manner.
3. On or about November 12, 2015, the Respondent violated RSA 313-A:22 II (d) and Bar 501.02 (e) by failing to maintain Colorful Nails in a sanitary and hygienic manner.
4. On or about November 16, 2016, the Respondent violated RSA 313-A:22 II (d) and Bar 501.02 (e) by failing to maintain Colorful Nails in a sanitary and hygienic manner.
5. As a result of her repeated violations of the provisions of RSA 313-A, the Respondent violated RSA 313-A:II, 22 (g) and Bar 501.02 (c) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics.

DISCUSSION AND CONCLUSION

The Board has the authority to undertake disciplinary action against a licensee, after a hearing and a finding that the licensee has committed misconduct as described above or has engaged in acts that pose a threat to public health and safety. RSA 313-A:22; Bar 402.01.

The Board has determined that the Respondent has engaged in professional misconduct by failing to maintain her salon, Colorful Nails, in a sanitary and hygienic manner. The Board relied on testimony from an experienced state inspector and the exhibits presented to conclude the Respondent violated sections of RSA 313-A and Bar 500 for failure to maintain her salon in a sanitary and hygienic manner. The Board finds the above Rulings of Law to be true.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 including (1) failure to maintain her shop in a sanitary and hygienic manner (2) knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent's personal and shop license are subject to a period of PROBATION for one year.

IT IS FURTHER ORDERED, that during the probationary period, any further fines for sanitation violations over the amount of \$100.00 shall automatically result in a hearing order to suspend the Respondent's personal and shop licenses.

IT IS FURTHER ORDERED, that the Respondent shall pay monthly payments of \$100.00 towards the fine payments which total **\$1,674.00** until the total fine amount is paid. Payment shall be made by a certified bank check or money order made payable to "Treasurer State of New Hampshire" and delivered to the Board's office at 121 South Fruit St, Concord NH, 03301.

IT IS FURTHER ORDERED, that failure to pay these fines shall cause additional legal/collection proceedings including court proceedings necessary to enforce this obligation. The Board may petition a court of appropriate jurisdiction to assess the Respondent with all costs including reasonable legal fees and accrued interest at the prevailing government rate.

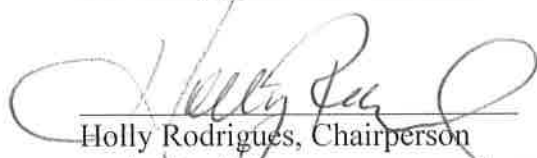
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,:22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

IT IS FURTHER ORDERED, that this Order shall become a permanent part of the Respondent's file, which is maintained by the Board as a public document.

IT IS FURTHER ORDERED, that this Order shall take effect as an Order of the Board on the date as authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date: 5-14-18

A handwritten signature in cursive script, appearing to read "Holly Rodrigues", written over a horizontal line.

Holly Rodrigues, Chairperson
Authorized Representative of the Board