

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

In Re:
Anna Nails,
Shop License #5046

Thuy Trang T. Nguyen,
Personal Lic. # 37888

Docket No.: 22-BAR-0017

**FINAL DECISION AND
ORDER– 11/28/22**

I. ATTENDEES:

Jeanne Chappell, Board Chair
Kimberly A. Hannon, Board Member
Sarah Partridge, Board Member
Joshua Craggy, Board Member
Tracey Pappas, Board Administrator
Talia Wilson, Board Administrator
Shana Warriner, Board Administrator
Sheri Phillips, Esq., Board Counsel
Shane D. Goulet, Esq., OPLC Hearings Officer
Thuy Trang T. Nguyen, Licensee and Shop Owner
Collin Phillips, Esq., OPLC Prosecutor
Sandra Hodgdon, Inspector for OPLC
Shannon Avery, Inspector for OPLC

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 05/18/22, 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 Anna Nails (“Licensee”) in relation to a complaint received on 03/12/22 alleging the Licensee’s shop was unsanitary. During the inspection, OPLC assessed 1,838 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. After providing the Licensee with notice, the adjudicatory hearing was held 11/28/22. 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. (28) Exhibits were submitted by Hearing Counsel, numbered as follows:

Prosecution's Exhibits

1. 03/12//2022 Enforcement Complaint
2. 03/15/2022 Response Request
3. 03/17/2022 Response
4. 04/08/2022 Additional Response
5. Confidential Memorandum Enforcement
6. New Shop Inspection Form
7. through 26. Inspection Photos (21 Total)
27. 05/18/2022 Shop Inspection Form
28. 01/12/2022 Routine Shop Inspection From

b. (3) Exhibits were submitted by Licensee/Shop Owner, in response to Hearing Counsel's identified Exhibits, numbered as follows.

Defendant's Exhibits

1. Licensee Shop Photos (14) pictures
2. Shop Reviews (8) documents
- (A) Licensee Sworn Statement

c. Testimony was received from:

1. Shannon Avery, Inspector
2. Sandra Hodgdon, Inspector
3. Thuy Trang T. Nguyen, Licensee / Shop Owner

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared for the hearing through its authorized representative/shop owner, Thuy Trang T. Nguyen. Pursuant to Rule 211.02(a), Hearing Counsel has the burden of proving its case by a preponderance of the evidence. The Presiding Officer admitted Hearing Counsel's (28) Exhibit's by

agreement of the parties. The Licensee submitted (3) Exhibit's. Exhibit's (1) and (3) were admitted by agreement of the parties. Licensee's Exhibit 2 was admitted by the Presiding Officer over the objection of Hearings Counsel. Hearing Counsel called two witness'. The Licensee testified in response. The credible evidence presented at the hearing allows the Board to find the following facts.

Shannon Avery, OPLC Inspector

Shannon Avery was sworn and testified that she is an inspector for OPLC Enforcement and to her training and experience in working for the State of New Hampshire. She explained that in her role as an inspector, she became acquainted with Licensee through conducting an inspection on May 18, 2022, after receiving a complaint on March 12, 2022, which alleged concerns for shops sanitation and overall cleanliness. Inspector Avery testified in support of the Hearing Counsel's Exhibits which evidenced the Licensee was operating a shop with multiple health code violations pertaining to unsanitary equipment, implements, and workstations; improperly disinfected implements and/or appliances; and disposable implements which were improperly disposed of and stored for re-use. She testified that the total assessed points for all violations was 1,838. *See* Exhibit 27.

Sandra Hodgdon, OPLC Inspector

Sandra Hodgdon was sworn and testified that she is an inspector for OPLC Enforcement and to her training and experience in working for the State of New Hampshire and in operating a salon. Inspector Hodgdon testified that she became acquainted with the Licensee on January 12, 2022, and January 19, 2022, through an initial inspection of the Licensee's shop after it had transferred ownership. She testified to providing the Licensee with guidance relative to the concerns noted within the report evidenced by Exhibit 28. She further testified that she also inspected the shop on May 18, 2022 and maintained the same concerns noted by Inspector Avery.

Thuy Trang T. Nguyen, Licensee and Shop Owner

Ms. Nguyen, Licensee Shop Owner, was sworn in under oath and testified. She stated that this is her first salon and that she is learning every day. Ms. Nguyen stated she is willing to learn “everything”, and she will “do the best she can.” She submitted Exhibit (A) which was sworn to be true and accurate under oath. She requested the Board not close her shop and further requested that the Board give her an opportunity to show she can do everything correctly, as she believes she has already made significant improvements to her shop’s procedures, appearance, and overall cleanliness. *See* Respondents Exhibit 1. Mrs. Nguyen represents that the photographs within Respondents Exhibit 1 were taken in and around the week of November 21, 2022.

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

After reviewing all the evidence, accounting for 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 committed professional misconduct. The Exhibits and witness testimony adequately support the conclusions that 1) the 05/18/22 shop violations noted by Ms. Avery and Ms. Hodgdon at Anna’s Nails occurred; 2) the Licensee requires further education and training regarding sanitization, disinfection, and sterilization. As part of this decision, the Board makes the following specific findings of fact and conclusions of law:

- A. On or about 03/12/22 and 05/18/2022, Licensee, Thuy Trang T. Nguyen was the holder of the shop license for Anna Nails in Plaistow, New Hampshire. *See* Exhibits 1, 2, 4, 6, 27 and testimony of Sandra Hodgdon and Shannon Avery.

- B. Pursuant to RSA 313-A:22(II)(c), (d), and (i) and Rule 404.09, 302.05, and/or 302.07, Licensee engaged in professional misconduct by, on 05/18/22, operating a shop with 1) multiple health code violations pertaining to: six (6) unsanitary foot spa agitators, six (6) foot spas which lacked records for cleaning and disinfecting, eight (8) unsanitary tables and six (6) unsanitary pedicure areas, forty (40) implements and or appliances improperly disinfected or stored, seventy-five (75) disposable implements improperly disposed of or stored, failed to maintain current record of cleaning and disinfecting of six (6) foot spas, failed to properly store two (2) creams and semi solid substances, failed to remove used towels and failed to properly store until laundered, improperly displayed

two (2) licenses. The total assessed points for those violations is 1,838. *See* Exhibits 5 through 27 and testimony of Shannon Avery and Sandra Hodgdon.

C. Upon finding that professional misconduct occurred the Board considered the Licensee's prior conduct. *See* Exhibit's 6, 28.

D. Pursuant to RSA 313-A:22(III)(b), and upon a finding of professional misconduct under section (II), the Board hereby **SUSPENDS** Licensee's shop license #5046 and personal license #37888 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's shop owner and manager to participate in (10) hours of program(s) of continuing education in the areas of sanitation, sterilization, and disinfection control within thirty (30) days of the signed date of this order. The continuing education may be completed through electronic means or in person. To document successful completion of the program(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 Chair to pre-approve courses on its behalf, so that the Licensee does not have to wait until a meeting to learn whether coursework he 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.
- b. The Licensee shall come into compliance with all matters noted in the inspection report dated 05/18/2022; including but not limited to licensing, sanitation, and sterilization issues.
- c. The Licensee's shop passes an inspection conducted by a Board inspector. The Licensee shall schedule this inspection with the Board inspector to occur *after* the Licensee has fulfilled sections D.(a) and D.(b) above, at a time that is convenient for the Board inspector.

E. Pursuant to RSA 313-A:22(III)(b) and upon a finding of professional misconduct under section (II), Licensee's license is subject to a period of **PROBATION** for three years commencing from the below signed date of this final order. Any violation of the Board's rules relating to sanitation and hygiene over 100 points within the probationary period 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. The Board is putting Licensee on notice that it may enforce this order specifically using unannounced inspections.

F. 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 \$1,838.00, representing the cumulative point values for the

violations noted in the 05/18/22 inspection report. Said administrative fine is assessed after hearing pursuant to Rule 404.11

G. Pursuant to RSA 332-G:11, the Board affirmatively assesses Licensee Thuy Trang T. Nguyen, as the manager and owner of shop license #5046, the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00.

H. The \$1,838.00 administrative fine shall be paid within 180 days of the below signed date of this final order.

I. The \$500.00 fine shall be paid within 30 days of the below signed dated of this final order.

J. 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.

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

L. 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.

M. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee, 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 **SUSPENDS** Licensee's licenses, and subjects it to further discipline as outlined above.

DATED: 12/6/2022

/s/ Shane.D. Goulet, Esq.
Shane D. Goulet, Esq. Hearings Officer
Authorized Representative of the
Board of Barbering, Cosmetology, and Esthetics-
New Hampshire Office of
Professional Licensure & Certification

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