

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

BOARD OF BARBERING, COSMETOLOGY, AND ESTHETICS

**In Re:
Eden Nails,
Shop License #3788**

**Tin Nguyen,
Manicurist Lic. # 20201**

Docket No.: 22-BAR-00010

**FINAL DECISION AND
ORDER- 09/28/22**

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 Agency Counsel and “interim” Presiding Officer
Tin Nguyen, Licensee and Shop Owner
Collin Phillips, Esq., OPLC Prosecutor
Sandra Hodgdon, Inspector for OPLC

II. CASE SUMMARY/PROCEDURAL HISTORY:

On 02/17/22, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board"), through the Office of Professional Licensure and Certification ("OPLC) conducted an inspection of Eden Nails ("Licensee") during which it assessed Licensee 1979 violation points for hygiene, safety and license-related issues. After referring the matter to OPLC Division of Enforcement for further investigation and the investigation being conducted, the Board voted to commence this adjudicative

proceeding on 07/18/22. After providing the Licensee with notice, the adjudicatory hearing was held 09/19/22. 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. (19) Exhibits were submitted by Hearing Counsel, numbered as follows:

Prosecution's Exhibits

1. 4/26/2022 Inspection Memorandum – Hodgdon
2. Shop Application – Eden Nails/Tin Nguyen
3. 3/14/14 Initial Shop Inspection Form
4. 8/22/14 Shop Inspection Form: \$1,000.00 Fine
5. 10/23/14 Shop Inspection Form \$535.00 Fine
6. 10/26/15 Shop Inspection Form \$466.00 Fine
7. 6/2/20 Shop Inspection Form \$600.00 Fine
8. 2/17/22 Shop Inspection Form 1,979 Points
9. Photo: Attachment 7
10. Photo Attachment 8
11. Photo Attachment 9
12. Photo Attachment 10
13. Photo Attachment 11
14. Photo Attachment 12
15. Photo Attachment 13
16. Photo Attachment 14
17. Photo Attachment 15
18. Photo Attachment 16
19. EPA Fact Sheet Methyl Methacrylate 80-62-6

b. (6) Exhibits were submitted by Licensee/Shop Owner, in response to Hearing Counsel's identified Exhibits, numbered as follows.

Defendant's Exhibits

1. Owner's Response, Hearing Counsel Petition
8. Owner's Response to Prosecution 8
9. Owner's Response to Prosecution 9
10. Owner's Response to Prosecution 10
15. Owner's Response to Prosecutions 15
17. Owner's Response to Prosecution 17

c. Testimony was received from:

1. Sandra Hodgdon, Inspector
2. Tin Nguyen, Licensee / Shop Owner

IV. CONDUCT OF THE HEARING AND EVIDENCE PRESENTED:

The Licensee appeared for the hearing through its authorized representative/shop owner, Tin 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 evidentiary Exhibit's 1, 2, 3, 8, 9, 10, 11, 12,13, 14, 15,16, 17, 18, and 19 by agreement of the parties. The Licensee submitted (6) Exhibit's which were admitted by agreement of the parties. The Licensee objected to the admission of Prosecution's Exhibit's 4, 5, 6, and 7 claiming they were "old" and should not be used in consideration of the current matter. Hearing Counsel authenticated Exhibit's 4, 5, 6, and 7 on an individual basis through the testimony of Inspector Hodgdon and requested that "Administrative Notice" be taken of the documents. The Licensee renewed his original objection to the proposed Exhibits. Presiding Officer found Exhibit's 4, 5, 6, and 7 to be relevant and material and allowed the Exhibits be admitted for limited purposes pursuant to Rule 402.01(d). The Presiding Officer instructed that Exhibit's 4, 5, 6, and 7 only be considered for the limited purpose of determining what, if any, sanctions to impose on the licensee; but only if the Board made a determination that professional misconduct occurred. 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.

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. She explained that in her role as an inspector, she became acquainted with Licensee through conducting an inspection. Ms. Hodgdon stated that she conducted a shop inspection of the Licensee on or about 02/17/2022. During her inspection, she identified multiple hygiene-related violations, dirty metal implements, dirty foot spa agitators, improperly kept cleaning records, dirty sanitizer box containing skin

and nail clippings, etc. She testified that there were also violations involving (1) unlicensed worker performing services, improperly displayed licenses, (1) expired license, (1) bottle of Arina Acrylic liquid which contained methyl methacrylate (hereinafter "MMA"), and no first aid kit being located on the shop premises.

Ms. Hodgdon identified Exhibit 8 as being her inspection report from the 02/17/22 inspection, which documents all the violations she discovered. Ms. Hodgdon then referred to a variety of pictures marked as Exhibit 9, 11, 12, 13, and 14 in detailing specific hygiene-related violations she discovered on 02/17/22. She explained she was present when the pictures were taken and they are a fair and accurate depiction of what she observed. The exhibits showed multiple foot spa agitators found within the shop containing debris, hair, and biofilm. Inspector Hodgdon testified that the agitators had not been cleaned or disinfected properly. Ms. Hodgdon identified Exhibit 10 as small sanitizing oven utilized for cleaning implements which contained skin and nail debris and further identified that it had not been cleaned or disinfected properly.

Additionally, Ms. Hodgdon testified that Exhibit's 17 and 18 were pictures of a bottle of Acrylic Liquid containing "MMA" which was located in the licensee's shop. She further identified that "MMA" was a "bone bonding compound" that is prohibited in N.H.

After testifying about the issues present during the 02/17/22 inspection, Ms. Hodgdon discussed past inspections involving the Licensee, which occurred on 08/22/14, 10/23/14, 10/26/15, and 06/02/20. She explained that each of those inspections resulted in a finding of violations for one or more of the issues presented during the 02/17/22 inspection, including but not limited to unlicensed workers, (1) gallon of product containing (MMA), and hygiene related issues.

Licensee was presented with the opportunity to cross examine Ms. Hodgdon. Ms. Hodgdon acknowledged that neither the station nor the foot agitators were being utilized at the time of the

inspection. She also acknowledged that from 10/26/2015 through 6/2/2020 there had been no violations or complaints against the Licensee. She agreed that there had been no further complaints from 2/17/2022 to present.

Hearing Counsel questioned the Licensee who acknowledged the various violations noted in Exhibit 8 and submitted that he had undertaken remedial efforts to change his process and procedure at the direction of Inspector Hodgdon. Licensee agreed that it was his duty and obligation to understand the various procedure, rules, and standards relative to his license. During Hearing Counsel's examination, the Licensee acknowledged that he was aware that he hired an unlicensed worker who was employed by him at the time of the inspection; but noted that the unlicensed worker was familiar with the trade and had been licensed in another state prior to employment with the Licensee. The Licensee further stated that the individual has since received licensure with the aid of his shop. Hearing Counsel submitted his case after his direct examination of Ms. Hodgdon, the Licensee, and the admission of all Hearing Counsel's exhibits, pursuant to prior instruction of the Presiding Officer relative to Exhibit's 4 - 7.

Tin Nguyen, Licensee and Shop Owner

Tin Nguyen, Licensee Shop Owner, was sworn in under oath and testified. He requested the Board give him an opportunity to show he can do it right, as he believed his shop had made significant improvements in the sanitation and hygiene issues identified which he acknowledged. He testified in coordination with each of his admitted exhibits and articulated the specific procedures which he has no set forth in response to the Inspection Report from 2/17/2022 (Exhibit 8). He testified that the (1) gallon of product containing "MMA" was shipped to him from his supplier mistakenly, that it remained unopened in the back of the shop, and that neither he nor anyone in his shop uses the product. Mr. Nguyen testified that he has been making remedial efforts to ensure that his shop maintains compliance with the standards set forth and prescribed in the rules which govern his licenses.

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 02/17/22 shop violations noted by Ms. Hodgdon at Eden 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 02/17/22, Licensee was the holder of the shop license for Eden Nails in Gilford, New Hampshire. See Exhibits 2-8 and testimony of Sandra Hodgdon and Tin Nyguyen.

B. Pursuant to RSA 313-A:22(II) (c) and (i) and Rule 404.09, Licensee engaged in professional misconduct by, on 02/17/22, operating a shop with: 1) multiple health code violations; 2) improperly displayed licenses and (1) unlicensed worker; 3) (7) implements not discarded or stored properly; 4) (27) implements not clean/disinfected, and/ or stored properly; 5) sanitizer box contained skin and nail clippings; 6) (1) bottle of Arina Acrylic liquid containing "MMA"; and 7) no first aid kit The total assessed points for those violations is 1,979. See Exhibits 1, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 and testimony of Sandra Hodgdon.

C. Upon finding that professional misconduct occurred the Board considered Prosecution's Exhibits 4, 5, 6, and 7. The above referenced Exhibits documents the Licensee's prior inspection documentation and fines associated with those inspections dated 8/22/2014, 10/23/2014, 10/26/2015, and 06/02/2020 respectively.

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 #3788 and manicurist license #20201 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 (12) 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. At least (2) hours of the above referenced continuing education shall be in sterilization. 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 02/17/2022; 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 \$1,979.00, representing the cumulative point values for the violations noted in the 02/17/22 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 Tin Nguyen, as the manager and owner of shop license #3788, the reasonable cost of investigation and prosecution of this disciplinary proceeding in the amount of \$500.00.

H. The administrative fines and cost of investigation shall be paid within 180 days of the below signed date of this final order.

I. 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.

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

K. 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.

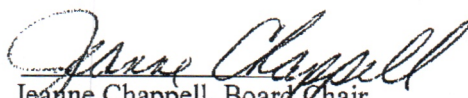
L. Per Order of the Board, if reasonably practical, a copy of this Order shall be served on the Licensee, in-hand, by OPLC staff. A copy of this order shall also be sent to the Licensee by

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: 9/28/2022



Jeanne Chappell, Board Chair
Authorized Representative of the
Board of Barbering, Cosmetology, and Esthetics-
New Hampshire Office of
Professional Licensure & Certification
7 Eagle Square
Concord, NH 03301