

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

In the Matter of:  
Huong Le  
Personal Cosmetology License Number 19533  
Shop License Number 3624  
(Adjudicatory Proceedings)

Docket No. 2014-06

**DECISION AND ORDER**

By the Board: Deborah Robinson, Public Member and Presiding Officer  
Michelle Kapos, Board Member  
Aaron Losier, Board Member  
Kimberly Hannon, Board Member  
Absent were Holly Rodrigues, Gary Trotter, and Christine Infantine.

Appearances: Laurel O'Connor, Hearing Counsel  
Sandra Hodgdon, Board Inspector  
Huong Le, Respondent  
Nghia Huynh, Translator/Interpreter for Respondent

**BACKGROUND**

On March 3, 2014 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Huong Le ("Respondent") had violated RSA 313-A:22, II (c), RSA 313-A:22 II (i), 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 (c), by allowing her employee to yell and use offensive language when speaking to the Board's Inspector, RSA 313-A:22 II (i) by failing to maintain her shop in a sanitary and hygienic manner, and RSA 313-A:22 II (i) by failing to pay the fine imposed by the Board Inspector.

The Notice of Hearing noticed the hearing for 11:00 am on April 14, 2014. On April 7, 2014, the Board received a letter from the Respondent asking to postpone the hearing due to a family tragedy. The Board reviewed this request at their meeting on April 14, 2014 and voted to postpone the hearing until the August 4, 2014 meeting. Another Notice of Hearing was issued, noticing the hearing for August 4, 2014 at 9:30 am. The Respondent appeared with her husband Nghia Huynh ("Mr. Huynh") to act as a translator and/or interpreter.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's 2 (two) exhibits:

- Exhibit 1, Shop Inspection Form dated October 3, 2013.
- Exhibit 2, Notice of Hearing dated April 15, 2014.

## HEARING TESTIMONY

### I. Hearing Counsel's Case

The Board has the authority to grant cosmetology licenses. See RSA 313-A:11. On January 12, 2007, the Board granted the Respondent a license to practice cosmetology in the State of New Hampshire. The Respondent holds cosmetology license number 19533. The cosmetology license is the Respondent's personal license.

The Board has authority to issue shop licenses. See RSA 313-A:19. On October 23, 2012, the Board granted the Respondent a shop license for Modern Nails & Spa ("Modern Nails"). The Respondent holds shop license number 3624.

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.

Inspector Sandra Hodgdon ("Inspector Hodgdon") testified at the hearing on an inspection she conducted on October 3, 2013. See Exhibit 1. Inspector Hodgdon testified she found the shop to be very clean, and was surprised to find one footspa that was dirty when swabbed with a cotton swab. Ms. Hodgdon also testified she found a wax pot hidden under a chair and explained to the Respondent that a wax pot was permissible at the shop, however only a licensed cosmetologist or esthetician could use it. Inspector Hodgdon testified she explained her findings of the dirty footspa and assessment of a \$100.00 fine to the Respondent. The Respondent then explained the findings to her husband, Nghia Huynh. Inspector Hodgdon further testified that Mr. Huynh began yelling at her as she was trying to leave the salon that she was raping him. Inspector Hodgdon testified she asked Mr. Huynh to stop using such language yet he continued and the Respondent did not try to stop him or say anything at all.

## **II. Respondent's Case**

Mr. Huynh testified for the Respondent, stating he believes they should have a warning before fines are issued. Mr. Huynh further testified that the inspector did not introduce herself when she entered the salon. Mr. Huynh stated he believes he has the cleanest salon in the whole state and invited the Board to see his salon. Mr. Huynh further testified that there is nothing they can do, they will always be fined. He asked the state to change the way they do business. He further testified that the state fined a previous salon they owned for toilet paper on the bathroom floor.

The Respondent also testified all the footspas are cleaned the same way and did not understand why one was dirty. The Respondent further testified that Mr. Huynh did make statements about the inspector trying to rape him.

## **III. The Board's Questions**

In response to the Board's questions, Mr. Huynh testified the footspas are pipeless and they use bleach to clean and spray the sanitizer after.

## **FINDINGS OF FACT**

The Board took into consideration all testimony and exhibits. The Board found Inspector Hodgdon's testimony to be forthright and credible. The Board also found the Respondent's testimony to be credible.

### Findings:

- The Board first granted a license to practice to the Respondent on January 12, 2007.
- Respondent holds personal cosmetology license number 19533.
- Respondent is the owner of Modern Nails license number 3624.
- On October 3, 2013 an inspection of Modern Nails was conducted.
- As a result of the inspection of Modern Nails on October 3, 2013, the inspector imposed a fine of \$100.00 for a footspa that was not cleaned properly.
- The Board found the shop to be clean in general.

## **RULINGS OF LAW**

The Board makes the following rulings of law:

1. On or about October 3, 2013, the Respondent violated RSA 313-A:22, II (i) and Bar 501.02 (e) by failure to observe the requirements of any rule adopted by the Board by failing to maintain her shop in a sanitary and hygienic manner.

## 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 finds that the Respondent failed to observe the requirements of any rule adopted by the Board by failing to maintain her shop in a sanitary and hygienic manner. The Board also finds however that the shop in general was clean and there were no fines issued for any other violations. The Board accepts the Respondent's testimony that all the footspas are cleaned in the same manner and only one was considered dirty.

The Board recognizes Mr. Huynh's statements as unprofessional. See Decision and Order for Docket number 2014-05.

Although the Board concludes the Respondent violated RSA 313-A and/or Bar 500 for failure to maintain her shop in a sanitary and hygienic manner, the Board voted to waive the \$100.00 fine for the footspa in consideration of the fact the salon was very clean in general and the other footspas which were tested were also clean.

## DISCIPLINARY ACTION

**THEREFORE IT IS ORDERED** the fine assessed to the Respondent shall be waived.

**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 an authorized representative of the Board signs it.

BY ORDER OF THE BOARD

Date: 12-1-14

  
Deborah Robinson, Public Member  
Board of Barbering, Cosmetology, & Esthetics