

**Before the
N. H. Board of Barbering, Cosmetology and Esthetics
Concord, New Hampshire**

In the matter of:

Janet Wong
Manicuring and Esthetics License Number: 15826
Shop License Number: 2927
Tanning Registration Number: 539
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2015-03

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairman
Gary Trottier, Vice Chairman
Aaron Losier, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Sandra Hodgdon, Board Inspector
Janet Wong, Respondent

BACKGROUND

On August 10, 2015 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Janet Wong ("the Respondent") had violated RSA 313-A:22 II and Barbering, Cosmetology and Esthetics Administrative Rules ("Bar") 501.02.

As set forth in the Notice of Hearing the purpose of the hearing was to determine whether Respondent violated:

- RSA 313-A:22 II (d), RSA 313-A:22 II (i) and Bar 501.02 (f) by coloring and cutting Sheryl Madeja's hair without having the proper license to do so;

- RSA 313-A:22 II (d), RSA 313-A:22 II (i) and/or Bar 501.02 (e) by failing to maintain J's Spa & Nails in a sanitary and hygienic manner;
- RSA 313-A:22 II (g) and Bar 501.02 (c) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, and Esthetics.

The Notice of Hearing noticed the hearing for September 14, 2014 at 10:30 a.m. The Respondent appeared as scheduled. After the hearing concluded and the record was closed, the Board notified the Respondent that they would deliberate on the matter. The Respondent opted not to remain for the public deliberations.

Hearing Counsel introduced eight (8) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for J's Spa & Nails dated March 4, 2013.
- Exhibit 2, Shop Inspection Form for J's Spa & Nails dated September 11, 2013.
- Exhibit 3, Shop Inspection Form for J's Spa & Nails dated May 6, 2014.
- Exhibit 4, Shop Inspection Form for J's Spa & Nails dated June 4, 2015.
- Exhibit 5, Shop Inspection Form for J's Spa & Nails dated June 24, 2015.
- Exhibit 6, Complaint letter from Sheryl Madeja received on April 13, 2015.
- Exhibit 7, Letter from Sheryl Madeja dated July 24, 2015 enclosing four (4) photographs.
- Exhibit 8, Notice of Hearing for Janet Wong dated August 10, 2015.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On June 11, 2003, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #15826. The manicuring license is the

Respondent's personal license. The Board has authority to grant esthetic licenses. See RSA 313-A:13. On July 2, 2003, the Board granted the Respondent a license to practice esthetics in the State of New Hampshire. The Respondent holds esthetics license #15826. The esthetic license is the Respondent's personal license.

The Board also 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. On or about November 18, 2003 the Respondent opened Nails & Waxing. The Respondent holds shop license 2927.

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. 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. Inspector Hodgdon has almost three years of experience as an inspector for the Board. Through Inspector Hodgdon, Hearing Counsel introduced five (5) Exhibits. All five were inspection reports. These reports are the current reports used by Board Inspectors to conduct shop inspections. Inspector Hodgdon testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On March 4, 2013, a Board Inspector inspected J's Nails & Waxing ("J's"). See Exhibit 1. The inspector found that several implements and/or supplies were not sanitized and disinfected or stored properly. The inspector also found several implements that were not discarded into a closed container. The inspector issued warnings for the Respondent's lack of blood spill supplies, nail drill signs, and a trash can which was overflowing. The inspector imposed a \$222.00 fine.

On September 11, 2013, a Board Inspector inspected J's. See Exhibit 2. The inspector found numerous implements and appliances that were not disinfected properly or stored properly and two (2) dirty footspas. The inspector also found there were no blood spill supplies and the record of cleaning for the footspas were incomplete. The inspector imposed a fine of \$979.00.

On May 6, 2014, a Board Inspector inspected J's. See Exhibit 3. The inspector found four (4) footspas that were not cleaned and disinfected properly, no record of cleaning for the footspas, numerous implements and appliances that were not sanitized or stored properly, numerous implements not discarded as required, no blood spill supplies, and no tanning registration for the tanning bed. The inspector imposed an \$853.00 fine.

On June 4, 2015, a Board Inspector inspected J's. See Exhibit 4. The inspector found three (3) footspas that were not cleaned and disinfected properly, no record of cleaning, numerous implements and appliances were not being disinfected or stored properly, numerous implements and supplies not discarded as required, licenses were not posted, an apprentice four (4) months behind on hour sheets, the tanning bed was not registered, and a credo blade. Hearing Counsel also introduced nine (9) photographs from this inspection. Inspector Hodgdon identified the photographs. The inspector imposed a \$2111.00 fine.

On June 24, 2015, a Board Inspector inspected J's. See Exhibit 5. The inspector found the tanning bed was not registered. The inspector imposed a \$1000.00 fine.

Sheryl Madeja (“Ms. Madeja”) testified at the hearing. Ms. Madeja identified Exhibit 6 as a letter she wrote to the Board about her visit to J’s. See Exhibit 6. Ms. Madeja testified that she had scheduled an appointment at 11 am on March 15, 2015 at J’s to have her hair highlighted. Ms. Madeja stated the hairstylist was late so the Respondent offered her a manicure, which she declined, and then a pedicure since the hairstylist was not going to be at the salon until 1pm. Ms. Madeja testified she accepted the pedicure. Ms. Madeja further testified that after finishing the pedicure, the Respondent asked her to pick out the hair color she wanted from a swatch book of hair and then directed her to sit in the hairstyling chair. Ms. Madeja stated she asked the Respondent if she did hair also, to which the Respondent replied “yes”. Ms. Madeja testified that the Respondent cut her hair first then applied the highlights/color to her hair. Hearing Counsel introduced Exhibit #7 which Ms. Madeja identified as a letter she submitted to the Board along with photos of her hair after the Respondent cut and colored it. See Exhibit 7. Ms. Madeja also testified the Respondent left a large chunk of hair brown in the back to show that there were highlights. Ms. Madeja stated when she got home and was able to see her hair in her own mirror she was very upset about how it looked. Ms. Madeja testified she called the Respondent to complain and asked if she was a real hairdresser, to which the Respondent replied “no”. Ms. Madeja stated she told the Respondent she wanted her money back and that her actions were illegal. Ms. Madeja testified that the Respondent stated she was aware it was illegal but she had done it before. In response to the Respondent’s questions, Ms. Madeja testified that she did tell the Respondent that her hair was “alright”. The Respondent also apologized to Ms. Madeja for working on her hair without a license.

II. Respondent's Case

The Respondent started her testimony by stating the old inspector for the Board had fined her for four footspas when she only had three at the time and she felt that was biased. The Respondent testified that she did not store things properly and had corrected the violations already by throwing items out and organizing. The Respondent further testified that she never used a credo blade or MMA on her clients. The Respondent stated the files and buffers were used only on herself and her employees and stated she did not store them properly. In response to the Board's questions, the Respondent testified that she was aware performing hair services without a license was illegal but she had done it on herself and her daughter. The Respondent also testified that she is unorganized but she does not have a filthy establishment. The Respondent again apologized to Ms. Madeja and testified she wants a second chance to continue to make a living and do what is right.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to J's. The fines listed were issued for the sanitation violations of implements not being properly discarded, sanitized, or maintained, implements and appliances not sanitized and stored properly, pedicure tubs not cleaned and disinfected. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found that the fines listed also included no blood spill supplies, an apprentice not wearing a name tag, unauthorized use of a credo blade, MMA violations, expired tanning registration, inspection report not displayed, lack of/ or incomplete records of disinfecting pedicure tubs.

The Board found Ms. Madeja's testimony to be forthright and credible. The Board further found that the Respondent performed cosmetology services without the appropriate license.

The Board found the testimony of Inspector Hodgdon to be credible and the inspection reports accurate and professional. The Board further found the notice of imposed fines to be accurate.

The Board found the Respondent's testimony to be less credible than Inspector Hodgdon's or Ms. Madeja's. The Board accepts that the Respondent is now apologetic and has corrected violations; however the Respondent did not do so until after a Notice of Hearing was issued.

RULINGS OF LAW

The Board makes the following rulings of law:

1. The Board may undertake disciplinary proceedings against its licensees. See RSA 313-A:22. If the Board finds sufficient misconduct pursuant to subsection II, it may impose disciplinary action pursuant to subsection III. See RSA 313-A:22.
2. On March 4, 2013:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain J's Nails in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain J's Nails in a sanitary and hygienic manner.
3. On September 11, 2013:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain J's Nails in a sanitary and hygienic manner.

- b. The Respondent violated BAR 501.02 (e) by failing to maintain J's Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 II (c) by failing to use only professional products specifically designed or manufactured for use in the profession according to manufacturer instructions by having MMA for use in the shop.
4. On May 6, 2014:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain J's Nails in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain J's Nails in a sanitary and hygienic manner.
5. On June 4, 2015:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain J's Nails in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain J's Nails in a sanitary and hygienic manner.
6. On March 15, 2015:
- a. The Respondent violated RSA 313-A:II 22 (d) by coloring and/or cutting Sheryl Madeja's hair without the proper license to do so.
 - b. The Respondent violated Bar 501.02 (f) by coloring and/or cutting Sheryl Madeja's hair without the proper license to do so.
8. Between March 2013 and June 2015, the Respondent violated RSA 313-A:22, II (g) by willful or repeated violations of the provisions of RSA 313-A.

9. The Respondent violated RSA 313-A:22 II (d) as a result of the repeated violations of the provisions RSA 313-A. The Board found the Respondent negligent and incompetent, allowing sanitation violations to continually occur and for coloring and cutting hair without proper licensure, therefore jeopardizing the health and safety of the public.

DISCUSSION AND CONCLUSION

The Board has 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 or safety. RSA 313-A:22; Bar 402.01.

The Board has determined that the Respondent engaged in professional misconduct by performing a haircut and chemical services on a client without a cosmetology license, by failing to maintain her salon premises, J's Nails and waxing, in a sanitary and hygienic manner. The Board relied on the exhibits presented as evidence and testimony given by a State Inspector and the complainant Sheryl Madeja, to conclude that the Respondent violated sections RSA 313-A and Bar 500 for failure to maintain her salon premises in a sanitary and hygienic manner, failure to register a tanning device, and for performing services without the proper licensure. The fines imposed at each inspection demonstrate a repeated, willful violation of the Board's Administrative Rule requirements for proper sanitation, proper licensing and tanning registration. The fines imposed were repeated and increased over time. At some point, the Respondent began a payment plan with the Board's office and although she has made payments, she continues to violate the rules and incur even greater fines to add to her installment plan.

The Board found inspection reports that were introduced into evidence to be valid, unbiased and accurate. The Board concluded that the Board Inspectors routinely give direction to salon

owners, managers and employees on how to correct violations at the time of each inspection. The Board concluded that there was no deviation of the standard practice here.

The Board's concern is the health, safety and welfare of the clients. Based upon past actions, the Board finds that the Respondent's request for another chance stating this time she would do what is right is not credible.

The Board concluded that these repeated violations specified in the inspection reports are evidence that the Respondent does not wish to correct the sanitation or tanning registration issues she was instructed to correct at every inspection. The Board concludes that any continuing sanitation education would not benefit the Respondent for she has repeatedly disregarded the Board's statutes and administrative rules. The numerous sanitation and licensing violations over approximately 2 years as an owner conveyed a blatant disregard for the rules of the Board. Therefore, the Board concludes suspension of personal licensure and revocation of shop licensure is necessary to ensure the safety and health of the public from these continued unsanitary practices and violations to licensing requirements.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring and esthetic licenses #15826 shall be suspended for a period of five (5) years, effective on the date an authorized representative of the Board signs it.

IT IS FURTHER ORDERED, that the shop license for J's Nails and Waxing #2927 shall be revoked, effective on the date an authorized representative of the Board signs it.

IT IS FURTHER ORDERED, that if/when the Respondent is reinstated for licensure, Respondent shall not own or manage any shop.

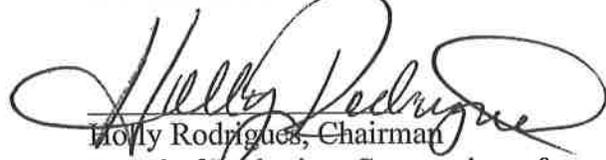
IT IS FURTHER ORDERED, that the Respondent shall pay all fines/monies owed to the Board within 90 days of the effective date of the order in a single payment by certified bank check or postal money order payable to the "Treasurer State of NH". Failure to pay these fines within 90 days of the effective date of this order may result in legal action necessary to enforce this obligation.

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; and

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.

Date 11/19/15

BY ORDER OF THE BOARD


Holly Rodriguez, Chairman
Board of Barbering, Cosmetology &
Esthetics

