

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

In the Matter of:

Docket No. 2015-01

Dieu Le

Personal Manicuring License Number: 20162

Booth License Number: 3584

(Adjudicatory Proceedings)

DECISION AND ORDER

By the Board: Gary Trottier, Vice Chair and Presiding Officer
Aaron Losier, Board Member
Christine Infantine, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Sandra Hodgdon, Board Inspector
Dieu Le, Respondent

BACKGROUND

On January 12, 2015 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Dieu Le ("Respondent") had violated RSA 313-A:22 II (d) and RSA 313-A:22 II (i).

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 RSA 313-A:22 II (i) by performing acts in a manner inconsistent with the health and safety of a client relying on her expertise and failing to observe the requirements of any rule adopted by the Board.

The Notice of Hearing noticed the hearing for 10:30 am on March 9, 2015. The Respondent appeared for the hearing as scheduled.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's two (2) exhibits:

- Exhibit 1, Complaint filed by Alyce Sneddon.

- Exhibit 2; Respondent's Application for Registration as a Booth Renter dated January 29, 2013.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On July 19, 2006, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 20162. The manicuring license is the Respondent's personal license.

The Board has the authority to grant booth licensure in accordance with RSA 313-A:19 II-b. On or about April 30, 2013, The Board granted the Respondent booth license number 3584.

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 26, 2014, the Board received a complaint from Alyce Sneddon ("Ms. Sneddon") stating she was cut on her foot during a pedicure at Regal Nails in Amherst. See Exhibit 1. The complaint stated the technician who performed the service (Respondent) used a skin scraper to remove callus on the bottom of her feet and caused a ½ inch wound on the top of Ms. Sneddon's left foot. Ms. Sneddon further stated in her complaint that she explained to the technician she was diabetic and asked the technician to be careful with her feet. The complaint also stated the wound became infected and treatment was received at an Urgent Care facility. Ms. Sneddon asked the Board for an investigation.

Ms. Sneddon testified at the hearing that she received a pedicure at Regal Nails in Amherst. Ms. Sneddon identified the Respondent as the technician who performed her service. Ms. Sneddon further testified that she explained to the Respondent that she was a diabetic and asked her to "be careful" with her feet. Ms. Sneddon testified the Respondent used a tool that resembled a "cheese grater" on the bottom of her foot. Ms. Sneddon testified the Respondent used the tool on the top part of her left foot on the softer skin, which immediately started to bleed. Ms. Sneddon further testified that the Respondent applied hydrogen peroxide to the wound and then returned her foot into the pedicure tub water and continued with the pedicure on her other foot. Ms. Sneddon testified the Respondent was not wearing any gloves. The Respondent finished her pedicure and applied a bandage. Ms. Sneddon testified she exited Regal Nails into the Wal-Mart to purchase antibiotic cream and bandages.

The Board allowed Ms. Sneddon to submit photos of the wound. Ms. Sneddon provided three (3) photos of the wound, two (2) of the photos showed the open and infected wound, and

the third showed the wound with a scab and in the healing process. Ms. Sneddon testified she had to go to an Urgent Care Center for treatment of the infection and had to wear slippers to work because of the pain and swelling. Ms. Sneddon further testified she is now under regular care of a podiatrist for the wound and her feet in general.

In response to the Respondent's questions, Ms. Sneddon testified that she was ignored by the Respondent about the wound and did not return to the salon until after the wound became infected to ask for a refund and inform the salon of the issue.

II. Respondent's Case

The Respondent testified that Ms. Sneddon already had a cut on her foot prior to the pedicure and the Respondent was the one to point out the cut. The Respondent further testified that she wore gloves for the service and only took them off to polish Ms. Sneddon's toenails. The Respondent also testified that they have the correct products if someone is injured in the salon and all the implements are cleaned with alcohol and Barbicide¹. The Respondent also testified that she put hydrogen peroxide on the wound and continued the service.

III. The Board's Questions

In response to the Board's questions, the Respondent testified that she understood what diabetes is and what can happen if a diabetic is injured. The Respondent also testified that she does not work on someone with diabetes. The Respondent stated Ms. Sneddon did tell her she had diabetes. The Respondent further testified that she used the foot file on Ms. Sneddon's heels. The Respondent testified she had a booth renter's license. See Exhibit 2

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. The Board found Ms. Sneddon to be forthright and credible. The Board found Ms. Sneddon's testimony to be true. The Board found that the Respondent contradicted her own testimony. The Board found the Respondent's testimony to be unreliable.

RULINGS OF LAW

1. On or about September 13, 2014, the Respondent violated RSA 313-A:22, II (d) by performing acts in a manner inconsistent with the health and safety of a client relying on her expertise by using an abrasive foot file/implement to remove skin on a client with diabetes, producing a wound during a pedicure.
2. On or about January 9, 2014, the Respondent violated RSA 313-A:22 II (i) by failing to observe the requirements of any rule adopted by the Board by following proper blood spill procedures after a client was injured.

¹ Barbicide is an EPA Registered Disinfectant

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 using an abrasive foot file/implement to remove skin from Ms. Sneddon's feet producing a wound, when Ms. Sneddon asked the Respondent to be careful because she was diabetic. The Respondent testified that she would not work on a client who has diabetes, yet the Respondent also testified Ms. Sneddon did tell her she had diabetes at the start of the pedicure. The Respondent also testified about the pedicure she performed for Ms. Sneddon. Due to the conflict of her statements, the Board finds the Respondent's testimony unreliable.

The Respondent testified that she saw the cut on Ms. Sneddon's feet prior to performing the pedicure. The Board does not find the Respondent's testimony to be plausible. The Board reviewed the photographs provided and determined that given size and severity of the wound, the wound was most likely produced from the pedicure and not sustained prior to the pedicure. The Board concluded that Ms. Sneddon would not have been able to endure a pedicure if she already had a gaping open wound on her foot.

The Board also concluded that the Respondent failed to follow proper procedure as outlined in Bar 301.07 (f) after inflicting the wound to Ms. Sneddon's foot. The Respondent and Ms. Sneddon testified the Respondent put hydrogen peroxide on the cut and then placed the foot back into the pedicure water and continued on with the pedicure.

The Board therefore concludes the Respondent violated RSA 313-A including (1) by inflicting a wound during a pedicure service (2) failing to follow proper procedure after inflicting a wound.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent's personal license and by default her booth license, are **SUSPENDED** for a period of five years OR until the following pre-conditions are complied with:

- A. The Respondent shall complete a course on bacteriology, safety, diseases and disorders including diabetes, blood spill procedures and infection control, and sanitation in a school licensed by the Board, or an online course approved by the Board.
- B. The Respondent shall complete comprehensive testing on topics described in A above at the Board office with a passing grade of 75% or greater.

IT IS FURTHER ORDERED, that the Respondent is assessed an administrative fine of two-hundred and fifty dollars (\$250.00). 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.

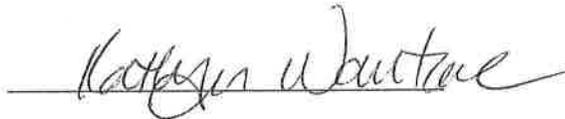
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,;22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

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: 4-13-15



Kathryn Wantuck, Executive Director
Authorized Representative of the Board

