

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

In the Matter of:
Huong Duong
Personal Manicuring License Number: 13897
Shop License Number: 2093
(Adjudicatory Proceedings)

Docket No. 2014-11

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
Huong Duong, Respondent
Dieu Le, Translator for the Respondent

BACKGROUND

On January 28, 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 Duong ("Respondent") had violated RSA 313-A:22 II (d), RSA 313-A:22 II (g), 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 (d) , RSA 313-A:22 II (g), RSA 313-A:22 II (i) and/or Bar 501.02(e), Bar 501.02 (c) by failing to maintain his shop in a sanitary and hygienic manner, willfully violating the statutes related to Barbering, Cosmetology, & Esthetics, and failing to observe the requirements of any rule adopted by the Board.

The Notice of Hearing noticed the hearing for 9:30 am on February 3, 2014. The Respondent appeared for the hearing as scheduled with his friend Dieu Le ("Ms. Le"). Ms. Le spoke at the hearing in part testifying, in part helping and/or speaking for the Respondent and acting as a counsel.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's five (5) exhibits:

- Exhibit 1, Complaint filed by Alyce Sneddon.
- Exhibit 2, Shop Inspection Form for Regal Nails dated April 4, 2013.
- Exhibit 3, Shop Inspection Form for Regal Nails dated January 9, 2014.
- Exhibit 4, Shop Inspection Form for Regal Nails dated September 29, 2014.
- Exhibit 5, Four (4) photographs taken by Beulah Stockman on or about September 29, 2014.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On November 6, 2001, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 13897. The manicuring license is the Respondent's personal license.

The Board 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-a. On or about April 4, 2013, The Board granted the Respondent shop license number 2093.

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 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.

As a result of the complaint, on September 29, 2014, Inspectors Beulah Stockman and Sandra Hodgdon inspected Regal Nail salon. See Exhibit 4.The inspectors found multiple sanitation violations. The Respondent was owner and manager at the time. The inspectors found five (5) foot spas and twenty-eight (28) implements that were not disinfected properly, twelve (12) implements that were not discarded as required, and five (5) tables and pedicure stations that were not sanitized properly. The inspectors further found the previous inspection report was not displayed as required and the Respondent did not have Material Safety Data Sheets (MSDS) as required. Inspector Hodgdon noted on the report that there were “nail clippings everywhere, floor is filthy, sink cover has mold on it, towels on station filthy, Q-Tips on the floor behind pedi chairs, pedi station has debris and nail clippings in them”. Inspector Stockman took photos of the salon. The inspectors imposed a fine of \$900.00.

Inspector Sandra Hodgdon (“Ms. Hodgdon”) testified at the hearing. Ms. Hodgdon has two years of experience as an inspector for the Board. Ms. Hodgdon testified on the inspection performed on April 4, 2013 when the Respondent became owner of Regal Nails. See Exhibit 2. Ms. Hodgdon testified she explained to the Respondent that he needed the Material Safety Data Sheets and gave him the literature about the sheets. Ms. Hodgdon further testified about an inspection conducted on January 9, 2014. See Exhibit 3. Ms. Hodgdon testified she found one gallon bottle of prohibited Methyl Methacrylate Monomer, one foot spa that was not disinfected properly and no record of cleaning for the foot spa. Ms. Hodgdon noted on the inspection form the “salon very dirty and could use a good general cleaning” and also noted the Respondent was “working on” obtaining the MSDS. A \$525.00 fine was imposed.

Ms. Hodgdon also testified about Exhibit 5. See Exhibit 5. Ms. Hodgdon explained each photo of the unsanitary conditions that were found on the September 29, 2014 inspection.

II. Respondent’s Case

Dieu Le (Ms. Le) translated and in part testified for the Respondent. Ms. Le is the manicurist who performed the service for Ms. Sneddon. See Decision and Order for Docket Number 2015-01. Ms. Le stated the pictures were incorrect and the equipment looked dirty because it is old. Ms. Le testified they have replaced all of the equipment in the salon. Ms. Le testified they were sorry but everything is better now. The Respondent showed the Board a picture on his phone of a UV light machine. Ms. Le stated they did use it previously, but now they use Barbicide¹.

III. The Board’s Questions

In response to the Board’s questions, Ms. Le testified that they use hot water and Barbicide to clean their implements. Ms. Le further testified they clean all the implements after each client.

¹ Barbicide is an EPA Registered Disinfectant

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. In addition to making a specific finding that the above Background Narrative was true, the Board found that the Exhibits presented showed multiple violations for sanitation. The Exhibits showed the salon was fined for foot spas that were not disinfected properly, use of MMA, and numerous implements which were not disinfected or disposed of properly. The Exhibits further showed violations for not displaying the inspection report, no MSDS, and no record of cleaning the foot spas. The Board found the exhibits presented to be valid, accurate, and unbiased. The Board found Inspector Sandra Hodgdon's testimony to be forthright and credible.

RULINGS OF LAW

1. On or about January 9, 2014, the Respondent violated RSA 313-A:22, II (d) and Bar 501.02 (e) by failing to maintain Regal Nails in a sanitary and hygienic manner.
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 having MMA monomer.
3. 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 not having a record of cleaning for the foot spas.
4. On or about September 29, 2014, the Respondent violated RSA 313-A:22 II (d) and Bar 501.02 (e) by failing to maintain Regal Nails in a sanitary and hygienic manner.
5. On or about September 29, 2014, the Respondent violated RSA 313-A:22 II (i) by failing to observe the requirements of any rule adopted by the Board by not displaying the inspection report.
6. On or about September 29, 2014, the Respondent violated RSA 313-A:22 II (i) by failing to observe the requirements of any rule adopted by the Board by not having MSDS.
7. As a result of his repeated violations of the provisions of RSA 313-A, the Respondent violated RSA 313-A:II, 22 (g) and Bar 501.02 (c) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics.

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 failing to maintain his salon, Regal Nails, in a sanitary and hygienic manner. The Board relied on testimony from an experienced state inspector and the exhibits presented to conclude the Respondent violated sections of RSA 313-A and Bar 500 for failure to maintain his salon in a sanitary and hygienic manner. The Board finds the above Rulings of Law to be true.

The Board rejects the Respondent's assertions that the equipment was not dirty but rather old. Exhibit #5 showed nail clippings and skin pieces in drawers, on the floor, and in towels. Furthermore the Board does not require equipment to be new, only for the equipment to be maintained in a sanitary and hygienic manner. Exhibit #5 also showed foot files not properly immersed in the disinfectant. The Board further finds that the Respondent did not disinfect the foot files properly. Exhibit #5 shows the files to be only half immersed in the disinfectant. See Exhibit #5.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 including (1) failure to maintain his shop in a sanitary and hygienic manner (2) knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent's personal and shop license are subject to a period of PROBATION for one year.

IT IS FURTHER ORDERED, that during the probationary period, any further fines for sanitation violations or the use of MMA shall automatically result in a hearing order to suspend the Respondent's personal and shop licenses.

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 the Respondent shall reimburse complainant Alyce Sneddon for her pedicure service in the amount of \$40.00. Payment shall be made by a certified bank check or money order made payable to Alyce Sneddon and delivered to the Board's office at 121 South Fruit St, Concord NH, 03301 within 30 days of this Order.

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.

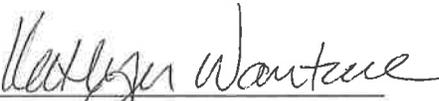
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,;22 II (c)and a separate and sufficient basis for further disciplinary action against the licensee.

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