

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

In the matter of:

Dan Nguyen
Manicuring and Esthetics License Number: 23430
Shop License Number: 1830
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2015-05

DECISION AND ORDER

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

Appearances: Ryan Keuhne, Hearing Counsel
Sandra Hodgdon, Board Inspector
Theresa Smith, Complainant

BACKGROUND

On November 9, 2015 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Dan Nguyen ("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:

- Bar 302.05 (q) by failing to properly clean and disinfect footspas at beauty nails;
- Bar 501.02 (e) by failing to maintain his salon in a sanitary and hygienic manner;

- RSA 313-A:22 II (g) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics;

The Notice of Hearing noticed the hearing for December 7, 2015 at 11:00 a.m. Indeed, on December 7, 2015, the hearing was held *in absentia* given that the Respondent did not appear at the scheduled time of 11:00 a.m. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

Hearing Counsel introduced nine (9) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for Beauty Nails dated March 11, 2013.
- Exhibit 2, Shop Inspection Form for Beauty Nails dated June 24, 2013.
- Exhibit 3, Shop Inspection Form for Beauty Nails dated March 26, 2014.
- Exhibit 4, Shop Inspection Form for Beauty Nails dated August 12, 2014.
- Exhibit 5, Shop Inspection Form for Beauty Nails dated June 6, 2015.
- Complaint submitted by Deborah Macri dated August 5, 2014.
- Complaint submitted by Theresa Smith received August 8, 2014.
- Respondent's response to Theresa Smith's complaint dated November 5, 2014.
- Certified letter from the Board to Respondent regarding Macri complaint dated October 15, 2014.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On January 24, 2002, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #23430. The manicuring 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 October 13, 2011 the Respondent purchased Beauty Nails. The Respondent holds shop license 1830.

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.

Theresa Smith ("Ms. Smith") testified at the hearing regarding her experience at Beauty Nails. Ms. Smith identified the complaint she wrote to the Board as Exhibit 7. See Exhibit 7. Ms. Smith testified that a technician at Beauty Nails pried off her acrylic nails with another nail causing her nails bleed. Ms. Smith further testified that the technician only instructed her to wash her hands in the sink and did not offer any bandages or antiseptic for the bleeding nails. Ms. Smith also testified that was the first and the last time she would have acrylic nails and she had not been back to Beauty Nails since the incident. Ms. Smith further testified that she was concerned for the other patrons of Beauty Nails after she witnessed a technician dropping a brush on the floor, pick it up without cleaning it, and continue to use it on the client.

Inspector Sandra Hodgdon (“Inspector Hodgdon”) testified at the hearing. Inspector Hodgdon has three years of experience as an inspector for the Board. Inspector Hodgdon testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On March 11, 2013, Inspector Hodgdon inspected Beauty Nails. See Exhibit 1. The inspector found implements and supplies that were not sanitized, disinfected or stored properly, and there were no nail drill signs posted. The inspector imposed a fine of \$204.00. Inspector Hodgdon also testified she issued a warning to the Respondent that he needed to obtain Material Safety Data Sheets (“MSDS”) and blood spill supplies. Ms. Hodgdon described the proper procedure a licensee is to take when a licensee or a client is cut.

On September 24, 2013, Inspector Hodgdon inspected Beauty Nails. See Exhibit 2. The inspector found numerous implements and appliances that were not disinfected properly or stored properly and one (1) dirty footspa. The inspector also found the Respondent had not obtained any MSDS or blood spill supplies. The inspector imposed a fine of \$273.00. Inspector Hodgdon also testified that she explained her findings at each inspection to the Respondent.

On March 26, 2011, Inspector Hodgdon inspected Beauty Nails. See Exhibit 3. The inspector found three (3) footspas that were not cleaned and disinfected properly, implements and appliances that were not sanitized, disinfected, or stored properly, implements not discarded as required, and an apprentice not properly supervised. Inspector Hodgdon further testified that the Respondent had not obtained MSDS. The inspector imposed a \$422.00 fine.

On August 12, 2014, Inspector Hodgdon inspected Beauty Nails. See Exhibit 4. The inspector found two (2) footspas that were not cleaned and disinfected properly, numerous implements and appliances were not being disinfected or stored properly, the inspection report not

displayed, an apprentice was not properly registered with the Board, and the Respondent had not obtained MSDS. The inspector imposed a \$431.00 fine. Inspector Hodgdon further testified that she was familiar with Deborah Macri ("Ms. Macri"). Ms. Macri had voiced concern about Beauty Nails to Inspector Hodgdon. Inspector Hodgdon testified she asked Ms. Macri to write a formal complaint to the Board. Inspector Hodgdon further testified the August 12, 2014 was conducted after receiving the written complaint from Ms. Macri.

On June 6, 2015, Inspector Hodgdon inspected Beauty Nails. See Exhibit 5. The inspector found an apprentice not wearing a name tag and not properly registered with the Board, incomplete MSDS, and an individual working without a New Hampshire license. The inspector imposed a \$600.00 fine.

The Board accepted Hearing Counsel's offer of proof for Exhibit 6. See Exhibit 6.

II. Respondent's Case

The Respondent failed to appear for the scheduled hearing. The Notice of Hearing was sent to the Respondent by certified mail and signed for on November 12, 2015.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Beauty Nails. The fines listed were issued for the sanitation violations of implements not being properly discarded, sanitized, disinfected or maintained, implements and appliances not sanitized, disinfected, 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 lack of

- a. The Respondent violated 302.05 (q) by failing to properly clean and disinfect foot spas at Beauty Nails.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Beauty Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 (g) for having willful or repeated violations of the Board's statutes and rules.
5. On August 12, 2014:
- a. The Respondent violated 302.05 (q) by failing to properly clean and disinfect foot spas at Beauty Nails.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Beauty Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 (g) for having willful or repeated violation of the Board's statute and rules
6. On June 6, 2015:
- a. The Respondent violated RSA 313-A:22, II (g) for having willful or repeated violation of the Board's statute and rules.

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 failing to maintain his salon premises, Beauty Nails, in a sanitary and hygienic manner. The Board relied on the exhibits presented as evidence and testimony given by a State Inspector to conclude

- a. The Respondent violated 302.05 (q) by failing to properly clean and disinfect foot spas at Beauty Nails.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Beauty Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 (g) for having willful or repeated violations of the Board's statutes and rules.
5. On August 12, 2014:
- a. The Respondent violated 302.05 (q) by failing to properly clean and disinfect foot spas at Beauty Nails.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Beauty Nails in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 (g) for having willful or repeated violation of the Board's statute and rules
6. On June 6, 2015:
- a. The Respondent violated RSA 313-A:22, II (g) for having willful or repeated violation of the Board's statute and rules.

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.

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DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #23430 shall be **SUSPENDED** for a period of one (1) year, effective on the date an authorized representative of the Board signs it.

IT IS FURTHER ORDERED, that after the suspension period, if/when the Respondent is granted licensure, Respondent shall be subject to a probationary period of three (3) years. Any fines, violations, or misconduct related to the Respondent shall result in an automatic hearing order for revocation of his personal license.

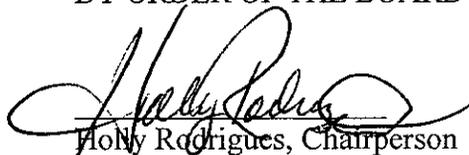
IT IS FURTHER ORDERED, that if/when the Respondent is reinstated for licensure; the Respondent shall not own or manage any shop as defined by RSA 313-A:19. Any future shop license application that is submitted to the Board where the Respondent is owner and/or manager, shall be automatically denied as a result of this Order.

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 1/11/15

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics