

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

In the Matter of:
Dao Nguyen
Personal Manicuring License Number: 10413
Shop License Number: 2036
(Adjudicatory Proceedings)

Docket No. 2015-10

DECISION AND ORDER

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

Appearances: Laurel O'Connor, Hearing Counsel
Beulah Green, Board Inspector
Dao Nguyen, Respondent
Mark Rosati, Counsel/Translator for the Respondent

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 Dao Nguyen ("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 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 12:00 pm on December 7, 2015. The Respondent appeared for the hearing as scheduled.

The Board accepted the following exhibits at the hearing:

- Hearing Counsel's six (6) exhibits:
 - Exhibit 1, Shop Inspection Form dated April4, 2013.

- Exhibit 2, Shop Inspection Form dated June 5, 2014.
- Exhibit 3, Letter from Kathryn Wantuck, Executive Director, dated December 19, 2014.
- Exhibit 4, Shop Inspection Form dated March 4, 2015
- Exhibit 5, Complaint letter from Joshua Katz dated October 20, 2015
- Exhibit 6, Shop Inspection Form dated October 27, 2015.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On October 20, 1998, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license number 10413. 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 April 23, 2009 the Respondent purchased Nail Care. The Respondent holds shop license 2036.

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 October 22, 2015, the Board received a complaint from Joshua Katz ("Mr. Katz") stating he went to Nail Care for a manicure on October 10, 2015. Mr. Katz stated in his complaint that he witnessed multiple sanitation violations including that none of the tools looked sterilized, a cuticle nipper was used to cut his cuticles which made three of his fingers bleed, the metal tools used were then put into a drawer with Mr. Katz's blood still on it, and that cuticle oil was brushed over Mr. Katz's bleeding cuticles and the brush returned to the oil container with blood on it.

Inspector Beulah Green ("Inspector Green") testified at the hearing. Inspector Green has three years of experience as an inspector for the Board. Through Inspector Green, Hearing Counsel introduced inspection reports as Exhibits. These reports are the current reports used by Board Inspectors to conduct shop inspections. Inspector Green testified to the date of each inspection, the fines issued for each inspection, and the reason for such fines.

On April 4, 2013, Inspector Green conducted an inspection Nail Care. See Exhibit 1. The inspector found two footspas that were not disinfected properly, no record of cleaning for two footspas, five tables that were not sanitized, numerous implements that were not sanitized and disinfected properly, numerous implements that were not discarded or disposed of properly, two credo blade holders and four credo blades, inspection report was not displayed, use of nail drills that are not manufactured for use on the natural nail (Dremel tools), and nail drill signs were not displayed. Inspector Green imposed a fine of \$4,158.00.

On June 5, 2014 Inspector Green conducted an inspection at Nail Care. See Exhibit 2. The inspector found multiple implements that were not sanitized or disinfected properly, multiple implements that were not discarded or disposed of properly, use of nail drills that are not manufactured for use on the natural nail, 27 bottles of Methyl Methacrylate monomer, a credo blade, and one individual working without a New Hampshire license. Inspector Green testified that the Respondent would not let her go into a back room and the inspection became intense and not a safe atmosphere, therefore she could not conduct a full inspection. Inspector Green testified that she tried to explain the fines but the Respondent would not stop yelling and screaming at her. Inspector Green imposed a fine of \$14,731.00.

On March 4, 2015 Inspector Green conducted an inspection of Nail Care. See Exhibit 4. The inspector found that there were no records of cleaning for nine (9) footspas, multiple implements that were not sanitized or disinfected properly, multiple implements that were not discarded or disposed of properly, two credo knives and three blades. The inspector imposed a fine of \$1693.00. Inspector Green testified that this inspection was the third time she had found credo knives and blades and the third time she explained to the Respondent that she could not have them in the salon.

On October 27, 2015 Inspector Green conducted an inspection of Nail Care. See Exhibit 6. Inspector Green testified she conducted this inspection as a result of a complaint that the Board office received on October 22, 2015. See Exhibit 5. The inspector found six footspas that were not disinfected properly, the record of cleaning for the footspas was not up to date, multiple implements that were not sanitized and disinfected properly, numerous implements that were not discarded or disposed of properly, and one unlicensed worker. Inspector Green testified that she witnessed a gentleman performing a pedicure on a client when she walked into Nail Care. Inspector Green attempted to get a license or identification from the individual, however he walked away and would not answer her. The Respondent was also issued a \$50.00 fine for unprofessional behavior for refusing to sign the inspection report. The inspector imposed a total fine of \$1558.00. Inspector Green testified that she explained to the Respondent that the footspas were not cleaned properly and showed her the debris and nail clippings found in the footspas. Inspector Green testified that the Respondent explained to her that she will not clean the footspas in front of the clients. Inspector Green further testified that the Respondent then accepted a client for a pedicure and proceeded to seat the client in a footspa that was not cleaned.

II. Respondent's Case

Mark Rosati ("Mr. Rosati") appeared with the Respondent to assist in translating the hearing for the Respondent to understand. Mr. Rosati would reword questions for the

Respondent to have a better understanding of the questions. The Respondent testified that the credo knives and blades were the old owner's and she has never used them on a client's foot. The Respondent also testified that although there were Dremel tools in her shop, they do not use them. The Respondent further testified that her shop moved and they still kept the credo knives and blades because they don't know what to do with them and did not want to put them into the trash. The Respondent testified that she met with the Board's Director, Kathryn Wantuck, for a pre-hearing conference to discuss the June 5, 2014 inspection and fine of \$14,731.00. The Respondent further testified that the majority of the fine for Methyl Methacrylate monomer was suspended based upon the results of the next inspection, and that the fine would be reinstated if there were further violations.

The Respondent also testified that she did not sign the inspection form because she did not understand it and does not read English well. The Respondent testified all of her employees are licensed and the individual Inspector Green found working was her boyfriend and only helping the client roll her pant legs down and "chatting" with the client. The Respondent testified that her boyfriend does not speak English and that is why he did not answer any of Inspector Green's questions.

III. The Board's Questions

In response to the Board's questions, Mr. Rosati testified that he has known the Respondent since 2004 and helps her in the shop with items that need fixing or helping her translate items. Mr. Rosati testified that he does not get involved with the business itself and he was not aware of all the inspection reports and alleged violations. In response to the Board's question, the Respondent and Mr. Rosati testified that they did not threaten the inspector at any time during the June 5, 2014 inspection.

FINDINGS OF FACT

The Board took into consideration all testimony and exhibits. The exhibits presented showed the multiple and repeated fines to Nail Care. 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, footspas 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 the unauthorized use of credo blades, inspection report not displayed, lack of/ or incomplete records of disinfecting footspas, unprofessional behavior, and an unlicensed individual working.

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

The Board found Mr. Rosati to be well presented and credible. The Board found the Respondent's testimony to be less reliable. The Respondent's answers were oftentimes non-responsive. The Board did not find the Respondent's explanations that they didn't use the credo

blades or did not know what to do with them to be persuasive. The Board further found the Respondent's explanation of the unlicensed worker only rolling pant legs down for the client as not credible.

RULINGS OF LAW

The Board makes the following rulings of law:

1. On or about April 4, 2013, the Respondent violated RSA 313-A:22, II (c) and/or Bar 501.02 (e) by failing to maintain Nail Care in a sanitary and hygienic manner.
2. On or about April 4, 2013, the Respondent violated RSA 313-A:22 II (d) by performing acts in a manner inconsistent with the health and safety of the clients relying on her expertise by having credo blades available.
3. On or about June 5, 2014, the Respondent violated RSA 313-A:22 II (c) and/or Bar 501.02 (e) by failing to maintain Nail Care in a sanitary and hygienic manner.
4. On or about June 5, 2014, the Respondent violated RSA 313-A:22, II (d) by performing acts in a manner inconsistent with the health and safety of the clients relying on her expertise by having credo blades available and using nail drills not manufactured for use on the natural nail.
5. On or about June 5, 2014, the Respondent violated Bar 501.02 (h) by aiding and abetting the practice of a person or persons who were not duly licensed.
6. On or about March 4, 2015, the Respondent violated RSA 313-A:22, II (c) and/or Bar 501.02 (e) by failing to maintain Nail Care in a sanitary and hygienic manner.
7. On or about March 4, 2015, the Respondent violated RSA 313-A:22, II (d) by performing acts in a manner inconsistent with the health and safety of the clients relying on her expertise by having credo blades available .
8. On or about October 27, 2015, the Respondent violated RSA 313-A:22, II (c) and/or Bar 501.02 (e) by failing to maintain Nail Care in a sanitary and hygienic manner.
9. On or about October 27, 2015 the Respondent violated RSA 313-A:22 (c) by refusing to sign the shop inspection form.
10. On or about October 27, 2015, the Respondent violated Bar 501.02 (h) by aiding and abetting the practice of a person or persons who were not duly licensed.
11. Between April 2013 and October 2015, the Respondent violated RSA 313-A:22 II (g) by willful or repeated violations of the provisions of RSA 313-A

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 Nail Care in a sanitary and hygienic manner. The Board relied on exhibits presented as evidence and testimony given by a state inspector to conclude that the Respondent violated RSA 313-A and Bar 500 for failure to maintain Nail Care in a sanitary and hygienic manner, allowing unlicensed individuals to work, the unauthorized use of credo blades, unauthorized use of a nail drill not manufactured for use on a natural nail, and unprofessional conduct by yelling and screaming at the inspector and refusing to sign the inspection form. The fines imposed at each inspection demonstrate a repeated, willful violation of the Board's requirements for proper disinfection and proper licensing of technicians. The fines imposed were for repeat offenses, although the Respondent was notified and educated on how to correct violations at each inspection.

The Board concludes the Respondent's testimony regarding credo knives and blades that she didn't know what to do with them as not credible. Inspector Green imposed fines for credo knives at three (3) inspections and notified the Respondent she could not have them available for use in the facility at each inspection. The Respondent was unresponsive when asked about her responsibility as an owner to understand the rules and laws of her profession.

The Board concludes the Respondent's testimony regarding the unlicensed working (Respondent's boyfriend) that was only rolling the pant legs down and "chatting" with the client as not credible. Inspector Green noted on the inspection form and testified to the fact that she witnessed this gentleman performing the pedicure. The Respondent also contradicted her own testimony by testifying her boyfriend did not speak English and could not answer Inspector Green's questions; however the Respondent testified her boyfriend was chatting with the client.

The numerous disinfection and licensing violations over approximately 2 years as an owner conveyed a blatant disregard for the rules of the Board. Therefore the Board deems suspension of the Respondent's personal license and revocation of her shop license as necessary to ensure the safety and health of the public from these continued unsanitary practices and violations to licensing requirements.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 including (1) failure to maintain her salon premises in a sanitary and hygienic manner, (2) failure to ensure all individuals working had a New Hampshire license, (3) having prohibited implements such as Dremel tools and credo blades available for use, and (4) repeatedly violating the provisions of RSA 313-A and/or Bar 500.

DISCIPLINARY ACTION

THEREFORE IT IS ORDERED, that the Respondent's personal license #10413 is **SUSPENDED** for a period of five years, effective on the date an authorized representative of the Board signs this Order.

IT IS FURTHER ORDERED, that the shop license for Nail Care #2036 shall be **REVOKED**, effective on the date an authorized representative of the Board signs this Order.

IT IS FURTHER ORDERED, if/when the Respondent is reinstated for licensure, the Respondent will be subject to a probationary period of 3 years. Any violation of RSA 313-A or the Board administrative rules during that probationary period shall automatically result in a hearing order for revocation of her personal license.

IT IS FURTHER ORDERED, that the Respondent shall pay all fines/monies owed to the Board within 90 days of this Order in a single payment by a certified bank check or money order payable to "Treasurer, State of New Hampshire". 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 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



Holly Rodriguez, Chairperson
Authorized Representative of the Board

Date: 2/8/16

