

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

In the matter of:

Amy Hoang  
Manicuring License Number: 24326  
Shop License Number: 3312  
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2015-08

**DECISION AND ORDER**

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

Appearances: Laurel O'Connor, Hearing Counsel

**BACKGROUND**

On January 11, 2016 the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Amy Hoang ("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 (d) by performing acts in a manner inconsistent with the health and safety of a client relying on her expertise;
- RSA 313-A:22 (g) by having repeated violations of the provisions of RSA 313-A;
- RSA 313-A:22 II (i) by failing to observe the requirements of any rule adopted by the Board; and

- Bar 501.02 (e) by failing to maintain her salon in a sanitary and hygienic manner;

The Notice of Hearing noticed the hearing for January 11, 2016 at 9:30 a.m. Indeed, on January 11, 2016, the hearing was held *in absentia* given that the Respondent did not appear at the scheduled time of 9:30 a.m. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

Hearing Counsel introduced five (5) exhibits by offer of proof at the hearing:

- Exhibit 1, Shop Inspection Form for Ivy's Nails & Spa dated July 1, 2014.
- Exhibit 2, Shop Inspection Form for Ivy's Nails & Spa dated February 4, 2015.
- Exhibit 3, Letter from Respondent to the Board requesting a hearing concerning the Shop Inspection Form, dated July 24, 2014, along with letter from the Board dated July 9, 2014 requesting a response to the inspection report.
- Complaint from "Nancy", received by the Board on June 26, 2014.
- Complaint from "Samantha Johnson", received by the Board on July 8, 2014.

## HEARING TESTIMONY

### I. Hearing Counsel's Case

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On November 4, 2009, the Board granted the Respondent a license to practice manicuring in the State of New Hampshire. The Respondent holds manicuring license #24326. 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 May 5, 2014 the Respondent purchased Ivy's Nails & Spa. The Respondent holds shop license 3312.

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.

Hearing Counsel gave an offer of proof of all exhibits with Inspector Beulah Green and Board Director Kathryn Wantuck available for testimony. The Board accepted Hearing Counsel's offer of proof for all Exhibits.

On July 1, 2014, Inspector Beulah Green ("Inspector Green") inspected Ivy Nails & Spa. See Exhibit 1. The inspector found numerous implements and supplies that were not sanitized, disinfected or stored properly, multiple implements that were not discarded as required, six (6) tables which were not disinfected, soiled towels which were not deposited into a container, and eight (8) footspas which were not sanitized and disinfected properly. Inspector Green issued a warning for an employee without a New Hampshire license who left as soon as Inspector Green announced herself. Inspector Green noted on the inspection form that she went over all disinfection. Inspector Green imposed a fine of \$1,390.00.

On February 4, 2015, Inspector Green inspected Ivy's Nails and Spa. See Exhibit 2. The inspector found numerous implements and appliances that were not disinfected properly or stored

properly, four (4) footspas which were not disinfected properly, and a wax pot which was warm and had been used. Inspector Green imposed a fine of \$1044.00.

On June 26, 2014, the Board received a complaint from “Nancy” stating she was cut during a manicure and pedicure at Ivy’s Nails & Spa on June 23, 2014. See Exhibit 4.

On July 8, 2014, the Board received a complaint from “Samantha” stating she was cut during a manicure at Ivy’s Nails & Spa on July 5, 2014. See Exhibit 5.

## **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. The exhibits presented showed the multiple and repeated fines to Ivy’s Nails and Spa. 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 a wax machine and a warning was issued for an unlicensed worker.

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

## **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 July 1, 2014:

- a. The Respondent violated Bar 501.02 (e) by failing to maintain Ivy's Nails & Spa in a sanitary and hygienic manner.
- b. The Respondent violated RSA 313-A:II, 22 (i) by failing to observe the requirements of any rule adopted by the Board.
- c. The Respondent violated RSA 313-A:22 (d) by performing acts in a manner inconsistent with the health and safety of a client relying on her expertise.

3. On February 4, 2015:

- a. The Respondent violated Bar 501.02 (e) by failing to maintain Ivy's Nails & Spa in a sanitary and hygienic manner.
- b. The Respondent violated RSA 313-A:II, 22 (i) by failing to observe the requirements of any rule adopted by the Board.
- c. The Respondent violated RSA 313-A:22 (d) by performing acts in a manner inconsistent with the health and safety of a client relying on her expertise.
- d. The Respondent violated Bar RSA 313-A:22 (g) by having repeated violations of the provisions of RSA 313-A.

## 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 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 has determined that the Respondent engaged in professional misconduct by failing to maintain her salon premises, Ivy's Nails & Spa, in a sanitary and hygienic manner. The Board relied on the exhibits presented as evidence 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.

## DISCIPLINARY ACTION

**THEREFORE, IT IS ORDERED**, that Respondent shall pay all fines assessed at the July 1, 2014 inspection, in the amount of \$1390.00 and the fines assessed at the February 4, 2015 inspection, in the amount of \$1044.00, for a total amount of \$2434.00.

**IT IS FURTHER ORDERED**, that the Respondent shall pay all fines/monies owed to the Board within 60 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; 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 3-14-16

BY ORDER OF THE BOARD

  
Holly Rodrigues, Chairperson  
Board of Barbering, Cosmetology &  
Esthetics