

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

In the Matter of:  
Raymond Phan  
Personal Manicuring License Number: 14973  
Shop License Number: 2470  
(Adjudicatory Proceedings)

Docket No. 2015-07

**DECISION AND ORDER**

By the Board: Holly Rodrigues, Chair and Presiding Officer  
Gary Trottier, Board Member  
Christine Infantine, Board Member  
Michelle Kapos, Board Member

Appearances: Laurel O'Connor, Hearing Counsel  
Beulah Green, Board Inspector  
Raymond Phan, 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 Raymond Phan ("Respondent") had violated RSA 313-A:22 II (g), and Barbering, Cosmetology, and Esthetics Administrative Rules ("Bar") 302.05 (q) and 501.02(e).

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 (g), and/or Bar 302.05(q), Bar 501.02 (e) 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 10:30 am on January 11, 2015. The Respondent appeared for the hearing as scheduled.

The Board accepted the following exhibits at the hearing:

Hearing Counsel's seven (7) exhibits:

- Exhibit 1, Nails Time Shop Inspection Form dated May 22, 2013.

- Exhibit 2, Nails Time Shop Inspection Form dated August 1, 2014.
- Exhibit 3, Nails Time Shop Inspection Form dated September 4, 2014.
- Exhibit 4, Nails Time Shop Inspection Form dated November 26, 2014.
- Exhibit 5, Nails Time Shop Inspection Form dated August 18, 2015.
- Exhibit 6, Nine (9) complaints against Nails Times received by the Board between August 26, 2014 and December 22, 2014.
- Respondent's Renewal Application for Two Year Shop License, received by the Board on March 8, 2013.

## 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 14973. 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 2470.

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.

Between approximately August 26, 2014 and December 22, 2014, the Board received multiple complaints regarding Nails Time. As a result of the complaints, inspections of Nails Time were performed. Inspector Beulah Green ("Ms. Green or Inspector Green") testified at the hearing. Ms. Green has three years of experience as an inspector for the Board. Ms. Green testified on the details of each inspection.

On May 22, 2013, Inspector Green inspected Nails Time salon. See Exhibit 1. Inspector Green found multiple sanitation violations. The Respondent was owner and manager at the time. Inspector Green found five (5) foot spas and fourteen (14) implements that were not disinfected

properly, Thirty-five (35) implements that were not discarded as required. Inspector Green testified that the Respondent was always very attentive and agreeable. The inspector imposed a fine of \$794.00.

On August 1, 2014 Inspector Green inspected Nails Time. See Exhibit 2. Inspector Green testified that the salon was very busy at the time and therefore could not do a complete sanitation inspection. Inspector Green did find an apprentice with an expired permit. The fine imposed was \$25.00

On September 4, 2014 Inspector Green inspected Nails Time. See Exhibit 3. Inspector Green testified the inspection was a result of a complaint the Board received. See Exhibit 6. Inspector Green found twelve (12) footspas that were not disinfected properly, no record of cleaning for fourteen (14) footspas, sixteen (16) implements that were not sanitized and disinfected properly, forty-five (45) implements that were not discarded as required, and one individual working without proper licensure. Inspector Green noted on the inspection form that the footspas were a major concern. Inspector Green testified that she could not discern the signature on the inspection form, but that she explained her findings to someone in the salon. Inspector Green further testified that she was informed Raymond Phan was no longer the owner although the Board did not receive notification of a change of ownership. The fine amount imposed was \$2,416.00.

On November 26, 2014 Inspector Green inspected Nails Time. See Exhibit 4. Inspector Green found nine (9) footspas that were not disinfected properly, no record of cleaning for eleven (11) footspas, thirteen (13) implements that were not sanitized and disinfected properly, fifty-three (53) implements that were not discarded as required, and the inspection form not posted as required. The fine amount imposed was \$1,596.00.

On August 18, 2015, Inspector Green inspected Nails Time. See Exhibit 5. Inspector Green found five (5) footspas that were not disinfected properly, thirty-two (32) implements that were not sanitized and disinfected properly, twenty-eight (28) implements not discarded as required, and two expired permits. Inspector Green testified that a woman named Sara Pham said she was now the owner of Nails Time. Inspector Green further testified that the Board did not have any notification of change of ownership and that as of today, Raymond Phan is still listed as owner. The fine amount imposed was \$1,010.00.

## **II. Respondent's Case**

The Respondent testified that he sold Nails Time in December of 2014. The Respondent testified he did not inform the Board of any change of ownership. The Respondent further testified that he had many problems with the salon financially, with three other partners that owned the salon, and with his employees, therefore he was forced to sell it. The Respondent testified that he needs his personal license to work because he has opened a new salon in May of 2015.

### **III. The Board's Questions**

In response to the Board's questions, the Respondent testified that he did not have any problems in his new salon. The Board asked Inspector Green to be sworn in again to give testimony on the Respondent's new salon called 868 Time Spa. Inspector Green testified that the Respondent's new salon is spotless. The Respondent testified that he is no longer in a partnership and owns the salon himself, does all the work and cleaning to satisfy the customer.

### **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 footspas that were not disinfected properly, implements that were not sanitized and disinfected properly, implements that were not discarded as required, no record of cleaning for the footspas, and an unlicensed individual working. The Board took all testimony into consideration. The Board found Inspector Green to be forthright and credible. The Board found the inspection reports to be unbiased and valid. The Board also found the Respondent to be honest and credible.

### **RULINGS OF LAW**

1. On or about May 22, 2013, the Respondent violated Bar 302.05 (q) for failing to properly clean and disinfect footspas and Bar 501.02 (e) by failing to maintain Nails Time in a sanitary and hygienic manner.
2. On or about September 4, 2014, the Respondent violated Bar 302.05 (q) for failing to properly clean and disinfect footspas and Bar 501.02 (e) by failing to maintain Nails Time in a sanitary and hygienic manner.
3. On or about November 26, 2014, the Respondent violated Bar 302.05 (q) for failing to properly clean and disinfect footspas and Bar 501.02 (e) by failing to maintain Nails Time in a sanitary and hygienic manner.
4. On or about August 18, 2015, the Respondent violated Bar 302.05 (q) for failing to properly clean and disinfect footspas and Bar 501.02 (e) by failing to maintain Nails Time in a sanitary and hygienic manner.
5. As a result of his repeated violations of the provisions of the Board's Administrative Rules, the Respondent violated RSA 313-A:II, 22 (g) by knowingly or willfully repeatedly violating the rules and 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, Nails Time, 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 has determined the Respondent was honest and forthright in his testimony. The Board took into consideration that the Respondent's new salon has not had any sanitation violations and Nails Time may have had other partners who were not on record as owners. The Board therefore concluded the Respondent shall be responsible to pay half of the fines which were assessed to Nails Time while he was owner and that no further disciplinary action shall be taken.

The Board concludes the Respondent violated RSA 313-A and/or Bar 500 for failure to maintain his shop in a sanitary and hygienic manner.

### DISCIPLINARY ACTION

**THEREFORE IT IS ORDERED**, that the Respondent is to pay \$2,415.00, half of the total amount of the fines issued to Nails Time. Respondent may set up a payment plan with the Director of the Board.

**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: 3-14-16

  
Holly Rodrigues, Chairperson  
Authorized Representative of the Board