

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

In the matter of:

Roy Nguyen
Manicuring and Esthetics License Number: 14158
Shop License Number: 3622
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2015-04

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Aaron Losier, Board Member
Christine Infantine, Board Member
Michelle Kapos, Board Member
Kimberly Hannon, Board Member
Jeanne Chappell, Board Member

Appearances: Laurel O'Connor, Hearing Counsel
Beulah Green, Board Inspector
Roy Nguyen, Respondent
Ha Chu, Translator/Interpreter for Respondent
Veronica Nguyen, Respondent's Daughter and Translator

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 Roy 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:

- RSA 313-A:22 II (d), and/or (i) and Bar 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner;

- RSA 313-A:22 II (c), RSA 313-A:22 II (d), RSA 313-A:22 II (i) and/or Bar 501.02 by committing professional misconduct by allowing an unlicensed individual to work;
- RSA 313-A:22 II (c) and Bar 302.07 (g) (1) by using Methyl Methacrylate monomer
- RSA 313-A:22 II (g) and/or Bar 501.02 (c) by knowingly or willfully repeatedly violating the statutes related to Barbering, Cosmetology, & Esthetics;

The Notice of Hearing noticed the hearing for May 9, 2016 at 9:30 a.m. The Respondent appeared as scheduled. After the hearing was concluded, the Board deliberated the merits of the hearing and voted on findings.

Hearing Counsel introduced eight (6) exhibits at the hearing:

- Exhibit 1, Shop Inspection Form for Roy's Nails & Spa dated October 17, 2012.
- Exhibit 2, Shop Inspection Form for Roy's Nails & Spa dated June 14, 2013.
- Exhibit 3, Shop Inspection Form for Roy's Nails & Spa dated October 26, 2013.
- Exhibit 4, Shop Inspection Form for Roy's Nails & Spa dated July 31, 2014.
- Exhibit 5, Shop Inspection Form for Roy's Nails & Spa dated September 5, 2014.
- Exhibit 6, Shop Inspection Form for Roy's Nails & Spa dated June 5, 2015.

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 #14158. 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 17, 2012 the Respondent opened Roy's Nails & Spa. The Respondent holds shop license 3622.

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.

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 all six (6) Exhibits. All six were inspection reports. 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 October 17, 2012, Inspector Green conducted an inspection to open Roy's Nails & Spa ("Roy's"). See Exhibit 1. The inspector noted on the inspection form that Roy's needed to have antibacterial soap in the bathroom and the shop license would not be released until blood spill supplies were obtained.

On June 14, 2013, Inspector Green inspected Roy's. See Exhibit 2. The inspector found numerous implements and appliances that were not disinfected properly or stored properly and five (5) dirty footspas. The inspector also found soiled towels that were not in a separate container, no nail drill signs posted, and the record of cleaning for the footspas were incomplete. The inspector

also found an individual working without the proper license. The inspector imposed a fine of \$1142.00. Inspector Green also testified that she explains what her findings are at each inspection to the owner, manager, or employee.

On October 26, 2013, Inspector Green inspected Roy's. See Exhibit 3. The inspector found nine (9) 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 the inspection report was not displayed. The inspector imposed a \$982.00 fine. Inspector Green testified that this inspection was a follow-up visit to see if there were improvements from the June 14, 2013 inspection.

On July 31, 2014, Inspector Green inspected Roy's. See Exhibit 4. The inspector found eight (8) footspas that were not cleaned and disinfected properly, no record of cleaning, numerous implements and appliances were not being disinfected or stored properly, numerous implements and supplies not discarded as required, manicuring tables that were not disinfected properly, and the inspection report not displayed. Inspector Green testified that she spoke directly with the Respondent about disinfection of implements and footspas and noted on the inspection report that the Respondent voiced good understanding. The inspector imposed a \$1535.00 fine. Inspector Green testified to the proper cleaning and disinfecting procedures for the footspas.

On September 5, 2015, Inspector Green inspected Roy's. See Exhibit 5. The inspector found nine (9) footspas that were not cleaned and disinfected properly, no record of cleaning and disinfecting for the footspas, numerous implements and appliances that were not sanitized, disinfected, or stored properly, implements not discarded as required, the inspection report not displayed and a fine for unprofessional behavior. The inspector imposed a \$1432.00 fine. Inspector Green testified she spoke with the Respondent's daughter, Veronica, and this inspection and

explained the findings to her. Inspector Green further testified that a worker for the Respondent videotaped her performing the inspection.

On June 5, 2015, Inspector Green inspected Roy's. See Exhibit 6. The inspector found seven (7) footspas that were not cleaned and disinfected properly, no record of cleaning and disinfecting for the footspas, numerous implements and appliances that were not sanitized, disinfected, or stored properly, implements not discarded as required, and a bottle of Methyl Methacrylate monomer. The inspector imposed a \$1924.00 fine. Inspector Green testified that each inspection from June of 2013 to June of 2015 contained multiple violations for disinfection procedures.

In response to the Respondent's questions asked by Veronica Nguyen ("Ms. Nguyen"), Inspector Green testified that she asked a worker three times to clean and disinfect a footspa prior to placing another client in it and that she did not ask Roy himself. Ms. Nguyen stated that the worker may not have understood English and that is why Inspector Green had to ask three times. Inspector Green further testified that she has tried to talk to the Respondent multiple times and he turns his head and will not talk with her.

II. Respondent's Case

The Respondent testified that he had a partner who handled everything, who is no longer there. The Respondent testified that Inspector Green did explain procedures for disinfecting and cleaning implements and footspas, however he did not understand everything. The Respondent further testified that his employees do not always listen to him and clean as they should. Respondent stated from now on he would try harder and do his best to have his employees follow his directions. In response to the Board's question, the Respondent testified that he had

MMA in his shop because it belonged to the previous partner who has left. Ms. Nguyen testified for her father stating things have been difficult with other partners and he understands now that he has to be more firm with the employees.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. The exhibits presented showed the multiple and repeated fines to Roy's. 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 use of Methyl Methacrylate violation, nail drills signs not displayed, inspection report not displayed, lack of/ or incomplete records of disinfecting pedicure tubs, 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.

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 June 14, 2013:

- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - c. The Respondent violated RSA 313-A:22 II (c), (d), and (i) by committing professional misconduct by allowing an unlicensed individual to work.
 - d. The Respondent violated Bar 501.02 by committing professional misconduct by allowing an unlicensed individual to work.
3. On October 26, 2013:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
4. On July 31, 2014:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
5. On September 5, 2014:
- a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.

6. On June 5, 2015:
 - a. The Respondent violated RSA 313-A:22, II (c) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - b. The Respondent violated BAR 501.02 (e) by failing to maintain Roy's Nails & Spa in a sanitary and hygienic manner.
 - c. The respondent violated RSA 313-A:22 II (c) by using Methyl Methacrylate monomer.
 - d. The Respondent violated Bar 302.07 (g) (1) by using Methyl Methacrylate monomer.
7. Between June 2013 and June 2015, the Respondent violated RSA 313-A:22, II (g) and Bar 501.02 by willful or repeated violations of the provisions of RSA 313-A.
8. The Respondent violated RSA 313-A:22 II (d) as a result of the repeated violations of the provisions RSA 313-A. The Board found the Respondent negligent and incompetent, allowing sanitation violations to continually occur; therefore jeopardizing the health and safety of the public.

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, Roy's Nails & Spa, in a sanitary and hygienic manner. The Board relied on the exhibits presented as evidence and testimony given by a State Inspector to conclude that the Respondent violated sections RSA 313-A and Bar 500 for failure to maintain his salon premises in a sanitary and hygienic manner. The fines imposed at each inspection demonstrate

a repeated, willful violation of the Board's Administrative Rule requirements for proper sanitation and proper licensing. The fines imposed were repeated and increased over time.

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 Respondent did not present any exhibits, documents, or witnesses to reassure the Board that he had a former partner, had made any changes in the operation of Roy's Nails, or that he would try harder in the future. The Board did conclude that the Respondent appeared to be sincere when he stated he would try harder in the future, although there is no way for the Board to be certain of this. The Board accepted that the Respondent may not have understood clearly the repeated directions from the Board's inspectors; however the Respondent testified to the fact that he passed his exams for licensure and understood the rules of the Board.

The Board concluded the Respondent violated RSA 313-A and the Board's administrative rules and therefore voted to suspend the Respondent's personal license and impose a probationary period to ensure the health and safety of the public is protected.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #14158 shall be **SUSPENDED** for a period of three (3) months, effective on the date an authorized representative of the Board signs it. During the period of suspension, the Respondent shall appoint a licensee to serve as manager as the Roy's Nails.

IT IS FURTHER ORDERED, that the Respondent personal and shop licenses are subject to a **PROBATIONARY PERIOD** of two years effective upon the date an authorized representative of the Board signs it. During the probationary period, any violations for sanitation or disinfection over the amount of \$100.00 shall result in a hearing order for revocation of the Respondents personal and shop licenses.

IT IS FURTHER ORDERED, that the Respondent shall complete a course on bacteriology, safety, diseases and disorders, blood spill procedures and infection control, and general sanitation and disinfection procedures in a school licensed by the Board within two weeks of the effective date of this order. The Respondent shall complete comprehensive testing on topics described above at the Board office with a passing grade of 75% or greater.

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

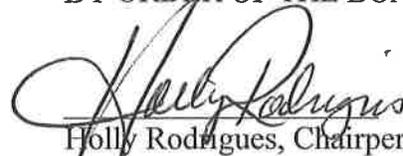
IT IS FURTHER ORDERED, that the Respondent's failure to comply with any term of the conditions imposed by this Order shall constitute professional misconduct pursuant to RSA 313-A,:22 II (c) and a separate and sufficient basis for further disciplinary action against the licensee.

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 06/13/16

BY ORDER OF THE BOARD



Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology &
Esthetics