

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

In the matter of:

Andrew Dinh
Personal License Number: 16401
(Adjudicatory/Disciplinary Proceeding)

Docket No. 2018-06

DECISION AND ORDER

By the Board: Holly Rodrigues, Chairperson
Jeanne Chappell, Vice Chairperson
Kassie Dubois, Board Member
Kimberly Hannon, Board Member
Joshua Craggy, Board Member

Appearances: John Brown, Hearing Counsel
Beulah Green, Board Inspector
Andrew Dinh, Respondent
Philip Che, Translator for the Respondent
Penny Taylor, Witness
Kathryn Wantuck, Board Director

BACKGROUND

On August 13, 2018, the New Hampshire Board of Barbering, Cosmetology, and Esthetics ("Board") issued a Notice of Hearing commencing a public disciplinary proceeding to determine whether Andrew Dinh ("the Respondent") had violated RSA 313-A:22 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 501.02 (j) by failing to use professional products specifically designed or manufactured for the use in his licensed profession, namely a nail file, nail drill and drying lamps, according to the manufacturer's instructions;
- RSA 313-A:22, II (d) in the course of providing nails services to Penny Taylor, negligently or willfully performed acts in a manner inconsistent with the health and safety of persons relying on the expertise of the licensee.

HEARING TESTIMONY

I. Hearing Counsel's Case

The Notice of Hearing noticed the hearing for October 15, 2018 at 9:30 a.m. The Respondent appeared as scheduled. Hearing Counsel introduced seven (7) exhibits at the hearing:

- Exhibit 1, Printout of Andrew Dinh's online license confirmation.
- Exhibit 2, Printout of email complaint from Penny Taylor to the Board dated April 11, 2016.
- Exhibit 3, Printout of supplemental complaint from Penny Taylor to the Board dated April 12, 2016.
- Exhibit 4, Response letter to the Board from Andrew Dinh dated May 2, 2016.
- Exhibit 5, Shop Inspection Form dated April 13, 2016.
- Exhibit 6, Printout of photograph of finger (side view).
- Exhibit 7, Printout of photograph of finger (top view).

The Board has the authority to grant manicuring licenses. See RSA 313-A:12. On or about September 28, 2011, the Board granted the Respondent a license to practice manicuring in the State

of New Hampshire. The Respondent holds manicuring license #16401. The manicuring license is the Respondent's personal license.

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.

Board Director Kathryn Wantuck ("Ms. Wantuck") testified at the hearing. Ms. Wantuck has 10 years of experience as the Board Director. Ms. Wantuck testified that the status of all licensees' is updated and available online. Ms. Wantuck identified Exhibit 1 as a printout from the New Hampshire Online Licensing System. See Exhibit 1. The record showed Andrew Dinh's manicuring license to be current.

Penny Taylor ("Ms. Taylor") testified at the hearing. Ms. Taylor identified Exhibits 2, 6 and 7 during her testimony. See Exhibits 2, 6, and 7. Ms. Taylor testified that she was a customer of A+ Princess Nails on April 10, 2016. Ms. Taylor testified she went to A+ Princess Nails with her daughter because she had been given a gift certificate. Ms. Taylor identified the Respondent as the person who provided her French tip manicure. Ms. Taylor further testified that the Respondent took out a box of used tools from underneath the table. The box was labeled "used implements" and Ms. Taylor asked the Respondent if the tools were used. Ms. Taylor testified that the Respondent had replied "no no no it's fine". Ms. Taylor also testified that the Respondent used a nail drill tool that caused her nails to burn on every nail. Ms. Taylor stated the

Respondent used a long black file that appeared to be already used on someone else on her nails as well as another file and a block. Ms. Taylor testified that she was cut on her nail with the black file and the Respondent used another file to sand down the file after she was cut. Ms. Taylor stated her cut was bleeding and the Respondent poured a solution on to it and continued the service. According to Ms. Taylor, the Respondent did not apply a bandage to the cut. Ms. Taylor stated the Respondent then used a block file on the top of her nails and was cut again. Ms. Taylor testified after the nails were done, the Respondent had her put her nails under a light on the table, but her nails were burning so she could not keep them under the light. Ms. Taylor testified that her nails were throbbing for 3 days after the manicure, even with the use of ice and ibuprofen.

Inspector Beulah Green (“Inspector Green”) testified at the hearing. Inspector Green has six years of experience as an inspector for the Board. Inspector Green described that she conducts routine inspections and investigations on complaints.

On or about April 13, 2016, Inspector Green conducted an inspection of A+ Princess Nails due to a complaint. See Exhibit 5. Inspector Green testified that Inspector Sandra Hodgdon accompanied her on this inspection and a representative of the shop signed the inspection form. Inspector Green found twenty-three (23) implements that were not cleaned and disinfected properly, twenty-nine (29) files that were not discarded as required, and six pumice stones that were not discarded as required. Inspector Green further testified that she explained all of her findings and how to correct the findings to the shop at the end of the inspection. A fine of \$455.00 was imposed.

Hearing Counsel read Bar 302.07(f) from the Board’s Administrative Rules. The rule states that if the skin of the licensee or patron is punctured, the licensee shall immediately apply antiseptic and a sterilized bandage, make available to the patron antiseptic and a sterilized bandage if still

bleeding, sanitize and disinfect the implement and appliance in use at the time of the puncture before proceeding, and put on disposable gloves. Hearing Counsel stated the drill the Respondent used on Ms. Taylor may have not been used properly and blood spill procedures were not followed according to the Board's Rules.

II. Respondent's Case

The Respondent's translator, Philip Che ("Mr. Che") read a prepared statement from the Respondent. The letter stated the Respondent has been a manicurist for 15 years in NH and Massachusetts. The letter further stated that a file was used to buff the nails which can cause some discomfort. Water was applied to the nails to cool them. The letter stated Ms. Taylor moved to talk to her daughter which is why her skin was cut. The letter further stated that the files were new and only used on Ms. Taylor. After the service the Respondent put the files in a box labeled used instruments for the shop owner to count the files at the end of the day.

In response to Hearing Counsel's questions, the Respondent stated he put the files in the box and the files are thrown away after the shop owner counts them. The Respondent brought the liquid antiseptic poured on Ms. Taylor to show the Board. The Respondent testified that sometimes it burns. The Respondent testified he did not put on a band aid because he could not finish her nails with a band aid on. The Respondent testified again that Ms. Taylor moved quickly and that is why she was cut. After the Respondent testified the hearing concluded. The Board then deliberated the merits of the hearing and voted on findings.

FINDINGS OF FACT

The Board took into consideration all exhibits and testimony. In addition to making a specific finding that the above Hearing Counsel's Case (Section I) was true, the Board found Ms. Taylor to be forthright and credible. The Board found the testimony of Inspector Green to be credible and the inspection report accurate, detailed, and professional. The Board further found the notice of imposed fines to be accurate.

The Board found the Respondent's testimony to be less credible. The Board made this finding based on the statements from the Respondent that Ms. Taylor moved and that is why she was cut. Exhibits 6 and 7 show the cuts to Ms. Taylor's cuticles. The cuts are consistent with cuts from aggressively filing too close to the skin. The Board found Ms. Taylor was injured from the nail file, nail drill, and the drying lamps because of the Respondent's negligent acts.

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 or about April 11, 2016:
 - a. The Respondent violated BAR 501.02 (j) by failing to use professional products specifically designed or manufactured for the use in his licensed profession, namely a nail file, nail drill, and drying lamps according to manufacturer's instruction by burning Ms. Taylor's fingers with the electric file and the drying lamps.

- b. The Respondent violated RSA 313-A:22, II (d) by in the course of providing nail services to Penny Taylor, negligently or willfully performed acts in a manner inconsistent with the health and safety of persons relying on the expertise of the licensee by cutting Ms. Taylor's fingers with a nail file, burning Ms. Taylor's fingers with a nail drill and drying lamps, and failing to follow proper blood spill procedure (Bar 302.07 (f)).

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 determined that the Respondent engaged in professional misconduct by acting in a manner inconsistent with the health and safety of persons relying in the expertise of a licensee by cutting Ms. Taylor's skin with a nail file on two separate nails during a manicure service. The respondent further acted in a manner inconsistent with the health and safety of persons relying on the expertise of a licensee by burning Ms. Taylor's fingers with the nail drill and use of the nail drying lamps. The Board further found the Respondent engaged in professional misconduct by failing to follow proper blood spill procedures as required by the Board's administrative rules.

The Board concluded the Respondent violated RSA 313-A and the Board's administrative rules and therefore voted to impose public discipline to ensure the health and safety of the public is protected.

DISCIPLINARY ACTION

THEREFORE, IT IS ORDERED, that Respondent's personal manicuring license #16401 is **SUSPENDED** until completion of a continuing education course on bacteriology, safety, diseases and disorders, blood spill procedures and infection control, and overall cleanliness in a salon.

IT IS FURTHER ORDERED, The Respondent shall enroll within 60 days a course on bacteriology, safety, diseases and disorders, blood spill procedures and infection control, and overall cleanliness in a salon in a school licensed by the Board, or an online course pre-approved by the Board and pass a comprehensive test on topics described above at the Board office with a passing grade of 75% or greater. The Respondent shall complete the course and test within 90 days of enrollment.

IT IS FURTHER ORDERED, that if/when the Respondent's personal manicuring license is reinstated, the Respondent's license shall be subject to a period of probation for 3 years. Any violation of the Board's rules within the probationary period shall automatically result in a hearing order to revoke the Respondent's personal license.

IT IS FURTHER ORDERED, that an administrative fine of \$100.00 shall be imposed. The Respondent shall pay the fine within 90 days of the effective date of the order in a single payment by certified bank check or postal money order payable to the "Treasurer State of NH". Failure to

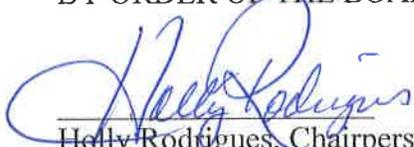
pay these fines within 90 days of the effective date of this order may result in legal action necessary to enforce this obligation.

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 1/14/19

BY ORDER OF THE BOARD

Holly Rodrigues, Chairperson
Board of Barbering, Cosmetology & Esthetics

